UNITED STATES
COURT OF FEDERAL CLAIMS

In the Matter of:	)	
	)	
MEXICAN HASS AVOCADO IMPORT PROGRAM	)	
	)	
Petitioner,	)	
	)	Docket No.: 00-003-2
v.	)	
	)	
UNITED STATES DEPARTMENT OF AGRICULTURE,	)	
	)	
Respondent.	)	

Pages: 1 through 75

Place: Escondido, CA

Date: August 16, 2001

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THE UNITED STATES DEPARTMENT OF AGRICULTURE

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Conference Room
California Center for Arts
340 N. Escondido Blvd.
Escondido, CA

Thursday,
August 16, 2001

The hearing in the above-entitled matter was convened, pursuant to notice, at 9:00 a.m.

BEFORE: MICHAEL LIDSKY
Assistant Director

P R O C E E D I N G S

(9:00 a.m.)

MR. LIDSKY: Good morning. Welcome. (Tape Malfunction) -- on July 13th in Volume 66 on pages 36892 through 36905. Copies of both of these documents are available at the registration table along with a summary sheet from the APHIS website which lists all of the supporting documents upon the proposed rule -- upon which the proposed rule is based. These documents may be downloaded in a portable document format from the APHIS website at aphis.usda.gov/ppq/avocados.

The purpose of today's hearing is to give interested persons an opportunity for the oral presentation of data, views or arguments on the July 13th proposed rule. Those persons that are testifying will have the opportunity to ask clarifying questions about the provisions of the proposed rule.

In the course of this process persons will have the opportunity to ask clarifying questions. In this course of this process Agency personnel will be limited to explaining the provisions of the proposed rule and the documents upon which it is based.

However, they must refrain from answering questions which would address any particular future regulatory action the Agency may take in the course of this

rulemaking proceeding.

APHIS views this hearing as an opportunity to receive public comments and answer clarifying questions and not as an opportunity for a debate on the issues. At these hearings any interested person may appear and be heard in person or through an attorney or other representative.

Persons who have registered either by e-mail or fax in advance of the hearing or have registered this morning in person will be given an opportunity to speak before unregistered persons. If the time permits, persons who have not registered will be given an opportunity to speak after all registered persons have been heard.

Today's hearing as well as the remaining two hearings are scheduled to conclude at 5:00 p.m. However, the hearing will conclude earlier than 5:00 p.m. if all persons who have registered to speak have been heard and there are no other persons who wish to speak.

I may extend the time or limit the time for each presentation so that everyone is accommodated and all interested persons have an opportunity to participate. I will announce any other procedural rules for the conduct of today's hearing as may be necessary.

All comments made here today are being recorded and will be transcribed. The Court Reporter for today's hearing is Mr. Carey Leffler of the Heritage Reporting

Corporation. A copy of the transcript shall be placed on the APHIS website at APHIS.usda.gov in approximately one week. A copy will also be made available for public inspection at the APHIS reading room, and that's Room 1141 at that USDA South Building in Washington, D.C., that room is open from 8:00 to 4:30 p.m.

I shall announce each registered speaker that has requested to present a prepared statement. Before commencing your remarks please state and spell your name for the benefit of the Court Reporter. In accordance with the procedures noted in the July 27th notice I'm requesting that anyone that reads a prepared statement please provide me with two copies of your prepared statement at the conclusion of your remarks.

Any written as well as an oral statement submitted or presented at today's hearing as well as any written comments submitted prior to the close of the comment period shall become part of the public record of the rulemaking.

If an individual's comments do not relate to the stated purpose of the hearing, which again is to present comments or questions on any aspect of the proposed rule, it will be necessary for me to ask that the speaker focus his or her comments accordingly.

I'd like to remind everyone that the close of the comment period is September 11th. Any comments made in

addition to those presented at today's hearing should be submitted to Docket No. 00-003-2. Regulatory Analysis and Development, PPD APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, Maryland 20737-1238.

When submitting such comments by mail please submit an original and three copies. This address appears in the proposed rule that is on the registration table.

Before concluding my remarks I'd like to introduce several other persons seated beside me. The first person I'd like to introduce is Mr. Wayne Burnett, Senior Import Specialist on the Phyto-Sanitary Issues Management staff. Mr. Burnett will provide an overview of the current avocado importation program as well as a summary of the proposed expansion.

Adjacent to Mr. Burnett is Dr. Edward Podleckis, a senior plant pathologist on the Permits and Risk Assessment Staff and co-author of a memo analyzing the previous risk assessment and its applicability to the proposed expansion. Dr. Podleckis will summarize the Agency's findings related to the risk assessment.

Adjacent to Dr. Podleckis is Dr. Ron Sequeira, a biological scientist with the APHIS Center for Plant Health Science and Technology and co-author of a study entitled "Identification of Susceptible Areas for the Establishment of Anastrapha Species Fruit Flies in the U.S. and Analysis

of Selected Pathways."

Adjacent to Dr. Sequeira is Mr. Scott Sanner, Western Region Director for Smuggling Interdiction and Trade Compliance.

After the presentation made by APHIS program personnel I'll call the first registered speaker. Lastly, we ask that before you leave here today please take a minute to complete a brief survey concerning the quality of today's hearing. We need your feedback on such things as the format for the hearing, accommodations and other aspects that you may wish to comment on.

We want to determine if how we've been conducting these hearings has been satisfactory to you. Copies of the survey are available on the registration table.

(Pause.)

MR. BURNETT: Thank you, Mike.

Good morning. My name is Wayne Burnett. My particulars are on the screen. This same information is also available in the proposed rule. Wayne Burnett, Senior Import Specialist, Phyto-Sanitary Issues Management, address USDA, APHIS PPQ, 4700 River Road, Unit 140, Riverdale, Maryland, phone number (301) 734-6799.

First I'd like to go over the pest risk management measures that are within the current program and give a brief overview as to how this proposed rule may affect any

of these, field surveys, trapping and field treatments, field sanitation, post-resistance, post-harvest safeguards, limited shipping window, packing house inspection and food cutting, port of arrival inspection and limited U.S. distribution.

The field surveys will not be affected by this proposed rule. The field surveys will still consist of the surveys needed to qualify an orchard in the Mexican export certification program, which includes an intensive orchard-by-orchard survey each spring for target pests.

Qualified orchards that qualify for the Mexican export certification program are then surveyed after July 1st, a joint survey with both Mexican and USDA Inspectors.

Trapping and field treatments will not be affected by the proposed rule. Trapping for fruit flies is a year-long program which will remain the same. Field sanitation is not affected by the proposed rule, fallen fruit will still have to be removed from orchards and dead branches will still have to be pruned back.

Post-resistance is unaffected by the proposed rule. Avocados still remains a poor host for fruit flies. Post-harvest safeguards will remain the same. Tarping of trucks after harvest from field to packing house, screening of packing houses, double-door entries, are still the same.

Limited shipping window. There is a proposed

change to this within the proposed rule. The limited shipping window is currently four months so the proposed rule will increase that by two months. Packing house inspection and fruit cutting is not affected by the proposed rule, fruit will still be cut -- sampled and cut at the packing house before shipping.

Port of arrival inspection is unaffected. At the port of arrival into the U.S. fruit will still be inspected. Limited U.S. Distribution, there is a proposed change in the proposed rule. Currently 19 states and the District of Columbia are approved, 12 additional states are proposed in the proposed rule.

The history of the import program, we have four shipping seasons completed, two program reviews have been completed. Total cartons imported 3,334,600. Total fruit cut and inspected 5,464,173. No target pests were detected in inspected fruit and we have good compliance to limited distribution requirements.

Talk a little bit about the compliance, of the 3.3 million cartons that were shipped into the U.S. -- this is a pie graph which illustrates the -- once in the U.S. distributed within the approved states is the green, 99.989 percent remained within the approved area. .11 percent found outside the area over the four years.

Further illustration of the non-compliance of the

.11 percent, this is a breakdown bar graph of the four years individually. You should take note that the first two years compliance was different from the last two years, there was a marked decrease.

This can be attributed to an intensive public affairs campaign at the end of 1999 and the beginning of 2000 to inform distributors and people buying and selling Mexican Hass avocados in the United States of our requirements and also APHIS promulgated an amendment to the rule which required -- now requires that all the distributors within the U.S. must obtain -- enter into a compliance agreement with the USDA.

To summarize what the proposed changes are in the proposed rule, shipping window increased by two months to include March and April and approved area for distribution increased by 12 states.

To further illustrate the approved states and the proposed additions, on the light blue up in the Northeast portion or the current states where Mexican Hass avocados are approved for distribution. In the proposed rule the new states, the 12 new states, are illustrated in the green.

That's the conclusion of my portion. I'd like to turn it over now to Dr. Podleckis to talk about the risk information.

(Pause.)

DR. PODLECKIS: Good morning. My name is Ed Podleckis. I'm the Senior Plant Pathologist on the Commodity Risk Assessment Team of the Permits and Risk Assessment staff at APHIS.

Our staff, headed by Dr. Mike Frocos, conducts plant pest risk assessments on imported commodities. It was our staff that wrote the 1995 plant pest risk assessment for the importation of Mexican Hass avocados into the United States.

So when the proposal was made to expand the current import program we were asked to review the 1995 risk assessment to determine if the assessment was still valid. That 1995 risk assessment used this model to estimate the likelihood of introducing four pest groups on Mexican Hass avocados imported under a systems approach. The four pest groups were Anastrepha fruit flies, two seed weevils, a stem weevil and seed moth.

The model lists all of the major steps that must occur in order for a pest introduction to take place. We estimate -- we used a range of probabilities to estimate the chance of each one of these steps, or nodes as we call them, occurring. We then multiplied the estimates for the steps together to calculate the annual chance of a pest outbreak occurring for each pest.

Our job with respect to this proposed expansion

was to determine which, if any, of these nodes was impacted by the proposed changes and determine whether our 1995 estimates were still valid.

F-1 estimates the number of boxes of Mexican Hass avocados imported annually. In the 1995 risk assessment it was estimated that between one and two million boxes of fruit would be imported each year. The actual number of boxes fell short of the minimum estimate for all but one of the four seasons since the Mexican Hass avocado program began.

Even if the proposed addition of 12 states were to occur, we feel that the number of boxes of Hass avocados imported would still fall within the range of estimates from the 1995 risk assessment.

P-1 is the probability that avocados in export groves in Mexico would be infested with one of the four target pest groups. The addition of states to the approved list for distribution in the United States would have no impact on whether avocados in Mexican groves are infested. Winter shipping would have little impact or has little impact on the level of infestation by either the weevils or the seed moth, but it does reduce the probability that avocados are infested by fruit flies.

The majority of this reduction is the result of lower levels of adult fruit fly activity in the Mexican

groves during the colder winter months. The question then becomes does extending the shipping season to include March and April mean that avocados would be shipped from Mexican orchards with high levels of adult fruit fly activity? Trapping data collected in Mexico as part of the current program would indicate that this isn't the case.

In four years of trapping only five fruit flies have been trapped during the months of March and April. All five of those captures occurred in a single shipping season and in a single Mexican municipality.

Our inspection data also indicates that the 1995 estimates for P-1 were sound. No target pests found in a total of about three and a half million boxes shipped falls well within the range estimated for the fruit flies and is actually better than what we estimated for either the weevils or the seed moth.

Each of these nodes is a probability that's unaffected by the proposed expansion of the import program. P-2 depends on the success rate of inspections in the field and at the packing house which in turn depends on factors such as the skill of the inspector and the level of scrutiny.

Now while this node will not be impacted by the proposed changes to the import program it is worth noting that in over five and a half million fruit cut and

inspected, no target in the field and the packing house -- no target pests have been found.

P-3 is the rate of mortality of pests during the shipping. This rate is dependent on characteristics of the pest biology and wouldn't be impacted by changes to the proposed changes to the import program.

P-4, like P-2, depends on things like the skill of the inspector and the level of scrutiny but here we're talking about an inspection at the port of entry rather than in the field and at the packing house. Again, it's worth noting that even though this node won't be impacted by the proposed changes there have been no pest finds in 65,000 fruit cut at the port of entry.

Finally, P-6 is the probability that a pest in an infested fruit transported to a suitable habitat can cause an outbreak. P-6 is based on historical data we have on the frequency of outbreak of Anastrepha fruit flies in the United States. It's a probability that it's derived from characteristics of the pest biology and wouldn't be impacted by the proposed changes to the program.

P-5 perhaps has the greatest potential for being impacted by these proposed changes. This is the estimate for the chance that fruit will be transported to a suitable habitat. Now suitable habitat we can define with two primary characteristics, that's available hosts and a

favorable climate. Avocado is essentially the only host for the weevils and the preferred host for the seed month.

Like in the currently approved states, neither avocados nor the alternate host for the seed moth are grown in the states proposed for addition to the list of approved states. So even in the unlikely event that these pests would be transported to these states they would not be able to find suitable host material.

For the fruit flies we referred to a recent publication produced by a subgroup of the North American Plant Protection Organization or NAPO's Pest Risk Analysis Panel headed by Dr. Rinaldo Ciceda. This study predicts areas of the United States that might be susceptible for the establishment of the Anastrepha fruit flies.

Using climate and host data and knowledge of the fruit flies biology the study focuses on the likelihood that these fruit flies could become established in the United States with particular reference to their use of Mexican Hass avocados as a pathway for entering the United States. The document is part of a broader joint U.S., Canada and Mexico effort to assess the establishment likelihood for these Anastrepha fruit flies in all of North America.

Data in the study indicate that in the proposed states susceptible fruit fly host material would not be available for more than six months out of the year and that

winter temperatures would be too cool for fruit fly establishment.

As this map indicates -- this is a map from the study and it summarizes some of the data in the study. As it indicates, all of the states proposed for the expanded distribution fall within the area of low likelihood for fruit fly establishment. The map is based on a combination of fruit fly temperature requirements, host available and generation potential.

Now, while the states that are proposed to be added to the approved list may not provide suitable habitat it is certainly possible that fruit may be transported outside the approved area. This could be the result of either inadvertent movement or intentional smuggling.

The 1995 risk assessment estimated that between one half of one percent and five percent of imported Mexican Hass avocados would be transported to a suitable habitat. According to the interception data we have, during the first two years of the program the percentage of fruit found outside the approved area fell below the minimum estimate of the 1995 risk assessment.

During the second two years of the program after a more stringent compliance program was adopted the percentages of fruit found outside of the approved area dropped to levels 100 to 1,000 times less than the estimates

of the 1995 risk assessment.

Even if we assume that not all of the diverted fruit is intercepted, the estimates in the 1995 risk assessment are at the very least reasonable and more likely actually overestimate the chance of fruit being transported to a suitable habitat.

I should also mention that of the fruit that was seized outside the approved area and inspected none of it contained any of the -- any quarantined pests.

I've tried to keep my comments brief so as not to take away anything -- any from your opportunity to make comments, after all that's why we're here. Risk and risk assessment are complex topics but I hope I've given you at least some idea as to why we have determined that the evidence, the assumptions and the conclusions of the 1995 plant pest risk assessment for the importation of Mexican Hass avocados remains valid and that a new risk assessment is not necessary, even if the proposed changes are adopted.

Thank you for your attention.

MR. LIDSKY: Ladies and gentlemen, when you finish making your remarks if you would leave two copies of your prepared text if you have it with the Court Reporter I would appreciate that. He has also requested that you leave behind a copy of your business card so he'll make sure he spells your name correctly. Thank you.

Our first registered speaker is Mr. Mark Affleck from the California Avocado Commission.

MR. AFFLECK: Good morning, gentlemen. My name is Mark Affleck, A-f-f like Frank-l-e-c-k. I'm President of the California Avocado Commission representing 6,000 avocado growers in California, American citizens, all.

Before I address the proposal on the docket today I need to go back to 1997 when the United States Department of Agriculture made a decision to allow Mexican Hass avocados into the U.S. despite the fact that fruit would originate from an area known to harbor dangerous quarantined pests.

The Department addressed the threat of pest infestation with a nine step process designed to mitigate risk. Unable to find a treatment that would ensure the mortality of insect pests in avocados the USDA pieced together a series of risk mitigation measures, wrapped a risk management analysis around it, and called it a "systems approach," the basis for the avocado import program discussed in today's expansion proposal.

The Department and its apologists have deemed statistics from the first four years of Mexican avocado imports as "impressive" but they are deceptive. If they were headlines in a newspaper they would scream "5.4 million pieces of fruit cut since the program began. 3.4 million

boxes of fruit shipped without a target pest find, a calculated probability of one chance in 24 million of a fruit fly outbreak." Those would be the headlines.

To a layman and to those spinning the numbers these points may be compelling and may even be impressive. To a scientist they are not. Now I am not a scientist, but every scientist educated at a reputable university knows that the numbers are only as good as the method relied upon to produce them. In this instance those methods are seriously flawed.

The results, as I have asserted, are emasculated deceptions of reality. Impressive? No way.

It is not surprising that USDA would parade these numbers before the public. On their face the statistics make it appear that USDA is doing its job working hard to keep Mexican avocado pests out of the U.S., working hard to protect California avocado growers. Yes, there is much political capital to be gained from using these statistics to deceive, using them to their fullest advantage.

So that doesn't surprise me, but what does surprise me is that the Department is actually placing faith in those numbers.

Let me be clear here and leave absolutely no misunderstanding. This is a powerful indictment of USDA's own scientists, whose professionalism has been crushed,

eviscerated.

The Department has long abandoned the objective analysis that forms the basis of every legitimate scientific inquiry. Those who remain in the debate after science is taken hostage by deception are trade facilitators, puppets, to the dealmakers now only masquerading as scientists.

Make no mistake, this is a deal agreed to at the highest levels of our own government sealed and delivered by USDA before the proposed rule was even issued. This hearing, just like the numbers, has one purpose only, to give the Department cover.

But if the California Avocado industry is to be bargained away for the good will of this Administration's favorite, if not wobbly, trading partner it will not be without the true and complete story going into this record.

We refuse to accept, let alone embrace, USDA's pseudoscientists. We refuse to acquiesce to their incorrect conclusions and allow USDA to hide behind these numbers. We refuse to play charades with the Department and ignore the predetermined course.

We should all acknowledge openly and objectively what this proposal is all about, it's about increased risk that the California Avocado industry must shoulder. it is about trade and politics, not science, and it's about favoring foreign interests over those of the domestic

producer.

But it is also about self-respect. In the end it is the California avocado growers and not Department officials who will stand on that higher ground.

Now to the proposal, after four years of Mexican avocado shipments to the U.S. the USDA is proposing to modify the avocado import program. Two of the risk mitigation steps in the Department's nine step systems approach, winter shipping and limited U.S. distribution all but disappear under the Department's proposal which would put Mexican avocados in 31 states from November through April each year. The current program allows, as we know, imports from Mexico into 19 states from November through February.

Three other steps, fruit fly trapping, fruit cutting at the packing house and inspection of fruit at the border have been conducted in such a way that the data generated are a meaningless, embarrassing joke.

Next is the issue of host resistance of Hass avocados, a risk mitigation step based on nothing but speculation. That leaves pre- and post-harvest field procedures as the only plausible safeguards to keep Mexican avocado pests out of California avocado groves. Examining each of these steps exposes their faulty underpinnings and flawed logic.

The USDA claims that the starting point in the risk equation is virtually zero, that fruit fly captures and traps set out in Mexican avocado orchards from November through April are insignificant. U.S. industry observers, however, have uncovered trapping problems that seriously undermine the credibility of USDA's numbers.

Our scientists have seen traps placed in direct sunlight outside the tree canopy as required by international standards. They've seen traps being washed out with soapy water. Take a trap already known for its low efficiency and rinse it improperly and you are even less likely to capture fruit flies.

They have seen trappers anxious to complete their work barely examine trap specimens to determine if target species were present. This clearly demonstrates that USDA's data cannot be relied upon under any circumstance, especially as the basis for an expansion of the avocado import program. We know that the flies are there.

Since 1997 the USDA has trapped 700 of them. Single digit captures from November through April are not in any way whatsoever believable.

There is no debate about the fact that fly populations are on the rise in April in Mexican avocado groves. This is borne out by the dozens of adult flies captured in May despite those flawed trapping techniques,

flies that existed one month earlier in April in larval or pupal stages.

The risk is real and it is significant. It would only take a warm spring, a two week shift in seasonal weather patterns, to precipitate explosive growth in fruit fly populations.

Unbelievably, USDA has compounded the risk by inventing a double standard when it comes to Hass avocados and fruit flies. In California Hass avocados are a host to the Mexican fruit fly. So when, as in 2000, two Mex flies were found 20 days apart just near here in Fallbrook, California, a domestic quarantine was declared.

In such a case U.S. growers are forced to comply with rigid protocols. They must bait treat for months for two fly life cycles before they are allowed to harvest their fruit and send it into the U.S. market.

In Mexico Hass avocados are a non-preferred host according to the USDA. This special status means that USDA or Mexican plant health officials do not have to look for fruit fly eggs or larvae when cutting fruit and, in fact, they don't. When two flies are captured in a Mexican avocado grove growers there also apply bait treatments, but unlike California growers, they can harvest their fruit immediately. The same fruit, the same market, different rules.

Rules that favor foreign interests over the interest of domestic producers. Rules that place risk squarely on the shoulders of U.S. Agriculture and 6,000 California avocado growers.

Well, there's more trouble with this proposal, trouble involving all of the insect pests the most prevalent of which is the stem weevil. In 1997 the USDA surveys had detected over 2,100 stem weevils in Mexican avocado groves. There is no indication during four years of surveying that populations are subsiding. In fact, stem weevils were found in 91 percent of all backyard groves in Herope (phonetic) and 64 percent of all commercial avocado orchards in the same municipality.

Imagine what the numbers would be if USDA actually read the scientific literature and timed the surveys to take pest biology into account instead of doing them when it is convenient for the inspectors. "But not to worry," the USDA tells us, "We've not found any pests of any concern in any of the five million pieces of fruit cut for the program." This is why there is deception in their so-called impressive statistics. It's a joke.

According to the scientific literature, a fruit fly egg is about 1.2 millimeters in length in the field and in the packing house where 99 percent of all fruit cutting for the program takes place. There are no dissecting

microscopes, no way to even see if fruit fly egg embedded in a Hass avocado, but still the USDA declares, "We have not found any pest of concern." Another joke, more deception.

Commission observers have witnessed fruit fly -- excuse me -- fruit cutting conducted for the program. In the field fruit is cut in half or quartered and inspected for seed damage or tunneling and then discarded. Weevil larvae feed just underneath the skin of the avocado near the stem end and unless fruit is closely examined they would never be detected and, incredibly, we've never seen a hand lens in use, never, not once.

In the packing house the process is even less effective. Fruit is cut in half and given a cursory glance and then brushed off the cutting table without examination.

At the border we've learned that most APHIS inspectors have no idea how to look for a weevil in an avocado nor do they have the time to carefully inspect pieces of fruit under a dissecting scope.

So over five million pieces of fruit may have been cut but if no one is looking, if the inspectors are not equipped, if there is no training, if time is short, if the cutting technique is flawed, then the results are totally and pathetically meaningless.

Let the record reflect today that this false reliance on the number of fruit cut is a presumptive sham

and that the California avocado industry knows it and, yes, the USDA scientists know it, too.

As I finish up here I must emphasize that the Department's "support" for this proposed rule consists of highly suspect trapping and fruit cutting data. Knowing that, it is unbelievable, unconscionable, that the USDA wants to put this fruit in the U.S. market in March and April.

After four years of winter shipping the Department makes an about face and abandons the cold weather rationale it had previously embraced emasculating the most important risk mitigation step in the entire system. Suddenly it's okay to send potentially infested fruit into the U.S. in the spring when temperatures are getting warmer instead of cooler, when fruit fly host material is growing and not dormant.

This counterintuitive action surely comes after the USDA promised Mexico that it would have six months to ship into the U.S. market and now it must do whatever it takes to deliver on that promise, to deliver on that deal.

The USDA maintains that it is still too cold in the 31 state proposed shipping area during March and April and that even if it were not pests could not become established because host material is lacking or not at the right stage of development, but mean maximum temperatures in

Missouri and other states will promote fruit fly development in March.

In fact, the 65 degree temperatures there are optimal for pest development and host crops like apricots are well along in terms of development by April. These are facts, facts we have confirmed with tree fruit specialists in every state along the southern tier of the proposed shipping area. Moreover, fruit shipped on April 30th would stay in the marketplace pipeline until late May.

Of the proposed 31 states only two, Maine and North Dakota, have mean temperatures below 60 degrees in May. Most range from 60 to 70 degrees or above and according to the scientific literature the optimal temperature for survival of adult Mexican fruit flies is 59 degrees.

The USDA has acknowledged that certain sectors of agriculture are highly vulnerable to fruit fly infestation and that climatic conditions across southern tier states are favorable for the establishment of fly populations.

Based on past experience, the USDA knows that a legal trans-shipment of Mexican avocados will occur and that fruit will surely move outside of the designated shipping area. This has caused the USDA to adopt, in principle at least, a buffer zone approach to limit the spread of avocado-specific pests.

While it is true that under the Department's proposal shipments will not be allowed into these so-called buffer states that border California, Texas and Florida, where commercial avocados are grown, potentially infested avocados would come dangerously close to home for the California avocado industry.

For example, Utah is a mere 200 miles from the California border and the distance between Kansas and Texas is separated only by the narrow panhandle of Oklahoma, a distance of just 50 miles.

While the USDA has embraced the buffer zone approach for avocado-specific pests illogically it refuses to do so for the fruit fly. Colorado and Utah border high-risk states where commercial oranges, grapefruit, peaches, apricots, plums and other hosts are grown, yet these states are included in the Department's expansion scheme.

The California avocado industry firmly believes that the requisite scientific evidence needed to support expansion of the Mexican avocado import program is lacking. There are too many infirmities in the program and gaps in the data.

So in the end we're left with questions. It comes down to questions. Will the Department take the appropriate steps and do what is right to strengthen the program? Will it revise and update its risk analysis to include known

avocado pests in Mexico? Will it confer with avocado research entomologists, experts in the field, to ensure that the risk analysis is exposed to rigors of external peer review? Will it adopt a buffer zone approach to the fruit fly and not just avocado-specific pests?

Will it withdraw from consideration states like Utah, Colorado and Kansas as long as fruit flies are among the list of quarantined pests? Will it make fruit cutting results meaningful by adopting and formalizing procedures to be used in the field at the packing houses and at the border?

Will inspectors be properly equipped and trained? Will the USDA stop being evasive about the timing of pest surveys in Mexico? What are they hiding? I've always thought that evasion is correlative to concealment.

Back to the questions. Will the Department establish a schedule that takes pest biology into account and stick to it? If Mexican officials refuse to adhere to the schedule with the USDA deny certification? Will fruit fly trapping receive closer USDA oversight? Will trapping data generated within proper techniques be rejected?

Finally, will the USDA standardize fruit fly treatment protocols, putting growers in the U.S. on the same footing as those in Mexico? When flies are found will the USDA let us bait treat and harvest or will it make everyone

wait through two fruit fly life cycles?

The California Avocado Commission on behalf of our state's 6,000 avocado growers has been actively engaged with the USDA on the Mexican avocado issue from our organization's inception. Over the years we have become an opponent and a partner. We have criticized when criticism is due and we have tried to do so constructively.

We have embraced the Department's efforts when program personnel have gone the distance to ensure compliance with the regulations. We have drilled down deep into the science, deeper than any other industry, and tapped a wealth of resources, national and international, on entomology, risk assessment, field procedures, treatment methods, fruit fly biology, quarantine technology and statistics.

We have conferred with the experts, learned the science and have come to understand the challenges presented by the regulation of phyto-sanitary matters. We have not come this far to accept in any way the USDA's flawed and risky plans. No, we will never do that.

We have dissected every element of the Department's analysis. We have scrutinized the Department's every move. We have watched every truck cross the border and we're not going to stop now.

No one should question our tenacity to protect

these growers from pest infestation. No one should question our resolve to protect these growers from pest infestation. No one should question our commitment to protect these growers from pest infestation.

The USDA should view our relentless pursuit of the truth in fairness with favor, for in the end it is in the Department's interest to have a program that works as designed. One that serves as a model for other countries as phyto-sanitary policy is being harmonized in a globalized economy shrouded in geopolitical maneuvering. One that is unquestionably sound from a scientific perspective so that it mitigates risk, truly mitigates risk.

It should be in the Department's interest to do those things, shouldn't it? Isn't that the Department's mission, isn't it?

The current Mexican avocado program and the expansion proposal is categorically unacceptable. Thank you.

(Applause.)

MR. LIDSKY: Thank you.

Our next speaker is Dr. Mary Lou Arpaia from the University of California Agricultural Center.

DR. ARPAIA: Good morning. My name is Mary Lou Arpaia, A-r-p-a-i-a. I'm an Extension Specialist with the UC Riverside Campus. I work with citrus and avocados and I

have been doing this since 1983.

My training both in graduate school and in work on -- since coming to UC Riverside has focused on post-harvest handling and fruit quality and the impact of cultural methods on fruit quality in the field.

Gentlemen, thank you for the opportunity to express some additional concerns pertaining to the proposed amendment to the current importation regulations from Mexican avocados. My comments restate concerns which I expressed under the 1995 protocol review. I would like to make the following brief points.

The biochemistry of the avocado fruit is clearly understood in the scientific literature. There is even a greater lack of understanding on the interaction between fruit maturity and host susceptibility to the fruit fly. Fruit maturation is a different process as compared to fruit ripening.

We know that many changes continue to occur in the avocado fruit as it hangs on the tree, including a shift in the fatty acid composition of the peel as described by Eiks in the 1980's, in the seven carbon sure concentration in the peel and the flesh of the fruit as described by Louadahl in 1999 and peel thickness, which has been described by numerous researchers.

In other crops such as citrus it's well documented

that the citrus fruit as it matures on the tree will become a more desirable host for various species of fruit fly. This has been demonstrated for grapefruit in Florida through research conducted by ARS researchers and more recently by ARS and UC researchers on lemons to both Mexican and Mediterranean fruit flies.

It is also well known, based on research by ARS and University of Hawaii researchers, that papaya fruit maturity is critical in determining the host susceptibility to fruit fly infestation. This type of information is completely lacking from all the current risk assessment work pertaining to fruit fly and avocado.

The underlying assumption has been that the avocado is a poor host for the Mexican fruit fly. We do not know that this is truly the case. What we do know from the Shala avocado debacle in Hawaii is that a presumed non-host can become a good host if conditions are correct.

To endanger U.S. Agriculture by its Spanish shipments into states which have host material available in the spring months is unconscionable unless we have a better understanding of the true host status of the Hass avocado to Mexican fruit fly.

What is the role of decreasing seven carbon sugars in the peel and flesh of the fruit during this time? What about changes in fatty acid composition? Finally, what

about the barrier infestation of the fruit, the peel? Because we know that it thins considerably as it hangs on the tree. We have no answers to any of these questions.

Secondly, the protocols must be in place for careful fruit inspection. There are now a number of examples to indicate that training and due diligence are critical in any fruit or trap inspection program. An excellent example of what can happen when due diligence is not employed is the introduction of the olive fly into California.

This fly was undetected officially until it was too late. Proper training in pest identification could have circumvented the disastrous introduction of this pest.

Careful fruit inspection for pests that have life stages that are too small to be determined by the unaided human eye requires at a minimum hand lenses and, even better, a dissecting microscope. Fruit fly eggs cannot be detected at the microscopic level as well as early life stages. Non-detection under the current fruit cutting procedures does not reveal non-infestation.

An instance where the California citrus industry has suffered but illustrates due diligence by fruit inspectors is the shipment of California naval oranges infested with bean thrips to Australia, again detected with hand lenses, and the full rose weevil in shipment of citrus

to Japan, again detected by the use of aids to the human eye.

In both cases training to look for potential quarantined pests and the proper tools revealed problems for the receiving countries. The proposed rule and the current practices in place do not ensure due diligence in either trap or fruit inspection. Due to this, there can be little confidence in the results reported to the California industry.

Finally, it is critical, as we have learned by the devastating introduction of the perseae mite and the avocado thrips, that we must safeguard against the introduction of any new avocado pests from avocado-producing countries.

The additional avocado pests which have been identified must be incorporated into the protocol for grove and fruit inspection. We cannot afford to have any new avocado pests introduced into the United States.

We have prided ourselves in California in growing fruit with minimal pesticide input. The proposed amendment continues to erode our ability to present to the U.S. consumer fruit of high quality with minimal pesticide use. Thank you.

(Applause.)

MR. LIDSKY: Thank you.

Mr. Charley Wola, please, from the California

Avocado Commission.

(Pause.)

We're going to make a slight change in the order of our speakers.

Dr. Joseph Morris, please.

(Pause.)

I'm sorry. I can't hear and I don't think the Court Reporter could pick that up, either.

(Pause.)

Okay. We can have Dr. Hoddle go first. Thank you.

(Pause.)

DR. HODDLE: Okay. Good morning. I've prepared a handout of what I'm going to talk about. Would you guys like it? Yes.

(Pause.)

My name is Mark Hoddle. I'm with the University of California at Riverside. I'm a Biological Control Specialist with the UC Cooperative Extension. My training has been in biological control of weeds in New Zealand and the biological control of whiteflies in Massachusetts in the United States.

I started at UC Riverside as a Biological Control Specialist in 1997. The focus of my research has been the biological control of mites and thrips, pests of avocados.

Essentially, I'll be presenting a summary of some of the foreign exploration work I've been doing in Mexico over the last three and a half years looking for natural enemies of some of these pests.

So the title of my presentation is "The Exotic Pest Threats to California-Grown Avocados." The three most recent avocado pests to establish in California are the red-banded whitefly, Tetraleurodes perseae; the persea mite, Oligonychus perseae; and the avocado thrips, Scirtothrips perseae. These pests were found in 1982, 1990 and 1996, respectively.

The whitefly and the thrips were both new to science at the time of their initial discovery in California. The persea mite was first described from specimens intercepted at a border inspection station in El Paso, Texas in the United States. Both the whitefly and the thrips had been previously intercepted at border ports of entry before detection in California.

These facts highlight three important points. First, there are probably additional serious avocado pests in Central America that are unknown entities that may be able to establish in California and inflict severe damage to commercially grown avocados.

Foreign exploration to the avocado thrips and its natural enemies has revealed at least four new species of

Frankliniella, a species of thrips, from Costa Rica, the Caribbean and South America. In addition, there is at least one new species of Scirtothrips -- that's the same genus as the avocado thrips -- in Costa Rica which dominates the thrips fauna on avocados in that country.

Furthermore, only three species of thrips, Frankliniella cephalica; Heliothrips haemorrhoidalis, which is already present in California; and Pseudophilothrips perseae from Mexico, are listed as potential pests by the USDA APHIS. All three species have been collected during foreign expiration efforts that I'm reporting on here.

However, from an examination of 2,135 slide-mounted thrip specimens from work that I've conducted over a four-year period, over 47 species of phytophagous thrips and at least 19 genera have been recorded from avocados in areas outside of California. Of collected specimens it is unknown how many species were collected as incidental visitors that originated from other host plants in the orchards surveyed.

A total of 38 phytophagous thrip species have been collected from avocados in Mexico by a thrips taxonomist called Roberto Johansen. However, only seven species, Frankliniella bruneri, Frankiniella chamulae, Heliothrips haemorrhoidalis, Pseudophilothrips perseae, Scirtothrips aguacatae, Scirtothrips kupandei, and Scirtothrips perseae are considered pests.

However, the validity of some of these Scirtothrips species collected from avocados in Mexico and described in a recent taxonomic review by Johansen has been questioned, as species designations were made according to morphological characters that exhibit high variation amongst individuals of the same species.

Consequently, deficits in the knowledge on the taxonomy, ecology and biology of the arthropod fauna on avocados in exporting countries may render any mitigation of accidental pest importation practices ineffectual.

Second, APHIS PPQ at Mexican border ports of entry both intercepted Oligonychus perseae, that's the persea mite, and Scirtothrips perseae, the avocado thrips, on avocados from Mexico before either pest became established in California. This strongly suggests that interception and exclusion policies are extremely valuable in preventing exotic avocado pests from Central America entering and establishing in California.

The biology of potentially serious pests like thrips, for example, makes detection very difficult. Thrips eggs are extremely small and are usually laid within the tissues of leaves or skin of fruit. The number of eggs laid within individual leaves and fruit in orchards infested with the avocado thrips in California can easily exceed 20.

Plant material entering the U.S.A., either legally

or illegally, with this number of viable eggs provides a good-sized cohort that could establish a reproducing population in a permissive environment. By a permissive environment I mean one that provides abundant food, a mild climate and a lack of specialized natural enemies.

The third point I want to make follows on from the second point and it's essentially dealing with founding numbers.

The small number of pests intercepted at border inspection stations on avocado plants that are moved into the United States suggests that founding populations of these pests may be very small. Work on Sericothrips staphylinus, which has been used for the biological control of a weed known as gorse, Ulex europaeus, which is a noxious weed in New Zealand, has demonstrated that 33 percent of carefully managed releases of just 10 adult thrips into a permissive environment can result in establishment and proliferation.

The greater the frequency of small introductions the higher the likelihood of establishment in comparison with fewer introductions of large numbers of thrips, which may go extinct due to chance events. This scenario from weed biological control may apply to the establishment of new thrips pest species outside of their home range. That is, small introductions frequently of these pests may

ultimately lead to establishment when founding populations encounter a permissive environment. Thank you.

(Applause.)

MR. LIDSKY: Dr. Joseph Morse from UC Riverside, please.

(Pause.)

DR. MORSE: My name is Joseph Morse. I'm a Professor of Entomology in the Department of Entomology at the University of California, Riverside. I've been there since 1981 working on various pests of citrus, avocados and a few other miscellaneous crops. I appreciate the chance to speak to you this morning.

The previous testimony by Dr. Mark Hoddle lists three avocado pest species that have been introduced recently into California, two of them, the persea mite and the avocado thrips, almost certainly came from Mexico.

The avocado thrips has been particularly devastating to integrated pest management of avocados in California. Economic losses attributed to avocado thrips have been calculated using 1998 grower packout records before and after avocado thrips established in orchards.

Results from economic models developed at the University of California at Davis by Dr. Karen Jetter showed an economic annual loss to avocado growers of between $7.6 million and $13.4 million from the combined effects of

losses in quality and increased production costs associated with avocado thrips control in 1998.

Introduction and establishment of new pests pose a potential threat to exports, also. Importing countries may refuse entry of the product as a result.

The key point is that prior to the discovery in California the avocado thrips was a species new to science. One wonders how this pest could be present in avocados in Mexico without being known as a pest in the scientific literature or having been described taxonomically. Several possibilities come to mind. First of all, perhaps because of differential phenology of the thrips in relation to when small fruit are present that are susceptible to scarring. The avocado thrips is not as pestiferous in Mexico as it is in California.

Secondly, perhaps because of a different climate, competing species, pesticide use patterns or the presence of effective natural enemies, it builds to lower levels in Mexico than in California.

Third, perhaps local growers and researchers know it is present but have failed to report its presence and, fourth, perhaps pest surveys have not been done providing an inventory of pest species present on avocados in Mexico.

When APHIS published a proposed rule 3 July 1995 to permit the importation of fresh Hass avocado fruit in

Michoacan into the U.S. a number of researchers in the Center for Exotic Pest Research at the University of California Riverside were asked to review the proposed rule.

In a report published in 1995, 25 comments were made regarding the proposed rule. I would like to quote comment number 21 of that report.

"Proper pest surveys of the export area have not been done, particularly in the absence of broad-spectrum pesticide use that maintain pest species at relatively low levels such that it is almost impossible to predict what other pest problems, both arthropods and diseases, might arise."

This comment in the 1995 report turned out to be prophetic. In July of the following year, 1996, the avocado thrips appeared in California and became a serious pest problem.

What is disturbing, however, is that it appears that proper surveys for pest species of avocados in Mexico have still not been done. Without thorough and properly timed surveys of Mexican avocado orchards for pest species potentially pestiferous in the U.S., how can a proper risk analysis be developed?

Redistribution of avocado fruit into U.S. states outside of the 19 states approved for shipping has occurred, it heightens the possibility of hitchhikers in boxes or

hidden within the flesh or seeds of mature fruit being introduced into California where they might establish.

I'd like to make one other comment regarding the fruit-cutting procedures used by USDA Inspectors and Mexican plant health officials.

The USDA's proposal relies heavily on the number of fruit cut and inspected over the past four years -- I am told in excess of 5.4 million fruit -- to arrive at the conclusion that the fruit does not carry any pests of concern. However, I believe observers are looking mainly for the evidence of tunneling and seed damage and don't normally use a hand lens or other magnification.

While this method of inspection might be suitable for large larvae or puparia it seems likely that it would be easy to miss the presence of eggs or very small larvae, for example, of Anastrepha species fruit flies.

In this case, and given the non-preferred host status of avocados for fruit flies and that it might take a small number of introduced specimens to initiate an economically important infestation, reliance on a large number of fruit cut to date holds little meaning.

With various species of thrips, for example, fruit cutting and observation without magnification might also be misleading. Mobile stages of thrips might jump in the case of immature larval instars or fly off the surface of fruit

in the case of adults, but eggs laid just under the skin of the fruit would be extremely difficult to detect. Thank you very much.

(Applause.)

MR. LIDSKY: Ms. Dorothea Zadig.

(Pause.)

MR. LIDSKY: Thank you, Dr. Morse.

MS. ZADIG: My name is Dorothea Zadig, Z-a-d-i-g. I'm here today representing the California Department of Food and Agriculture and in support of our avocado industry.

Thank you for traveling here today all the way to California to listen to our thoughts and concerns. We really hope that you listen carefully to what our industry people have to say and weigh their concerns carefully in your further study of this issue.

Core to the mission of the California Department of Food and Agriculture is protecting against the invasion of exotic pests and diseases. We support only the safe entry of plants and plant products and here's why.

California is the largest national agricultural economy -- it is the largest agricultural economy in the nation. More than half of the fruits and vegetables grown in the U.S. come from California. It's a $25 billion industry that produces 350 crops and livestock commodities.

California's avocado industry represents 90

percent of the nation's avocado production. It's a growing industry valued at $329 million. Although California farms represent four percent of the nation's farms, they represent 12 percent of the nation's cash receipts. California is the sole producer of a large number of specialty crops, the sole producer in the U.S.

With recent years expansions in both travel and trade, California with its temperate climate and diversity of plantings, is particularly vulnerable to exotic pest invasions. San Ysidro, located just south of here, is the largest land border crossing in the world. Long Beach Harbor, just to the north, is the sixth busiest port in the world. In combination with Los Angeles Harbor it becomes third only after Singapore and Hong Kong.

Los Angeles International Airport is adding three international terminals to its facility to handle a projected doubling of passengers and cargo by 2015.

Historically in California pesticide use by the avocado industry has been very minimal because pest populations have been kept low, below injurious levels with biological controls. Biological control has succeeded because here California's long-standing commitment to its pest prevention program.

The introduction in recent years of persea mite, avocado thrips and red-banded whitefly has been problematic

to this effort. The introduction of additional pests would clearly undermine this program.

To that end, with these pressures -- with these pest pressures adequate quarantine protection with mitigation of all pest risk at origin is critical to the protection of our industry and environment and the harm caused by exotic pest invasions.

We appreciated the Agency's amending the Mexican avocado regulation last year to require compliance agreements and strengthen the repackaging provisions after a number of violations of the limited distribution requirements occurred. Even so, during the shipping season we continued to intercept Mexican avocado shipments mostly at our border stations in violation of the limited distribution and travel corridor requirements. Recent years' interceptions were destined for British Columbia, Washington and even California.

We also appreciated your earlier solicitation for input regarding how to review Mexico's request. Even more so, we appreciated the invitation we received in September to accompany APHIS officials to Mexico to view the Mexican program first-hand.

We strongly request and hope that our scientists will be included in future trips to evaluate this and other programs to mitigate risk at origin. At the same time we

also ask that these trips be scheduled to observe the program at the best time, the optimal time of the year, to be able to see survey, other production practices and any pest populations that may exist.

In our comment to your earlier notice we specifically asked that daily temperatures be used rather than the mean monthly temperature data from at least one site for each municipality. In addition, we asked for the context for the data provided for review -- that is, the survey protocols, the practices, quality control reports, when surveys are conducted and how, trip reports, et cetera -- because without knowing the methods used we cannot interpret or understand the meaning of the data we're given.

My comments today are brief. We're still in the process of reviewing the proposed rule and the supplementary documentation. We will be submitting substantive comments on or before the deadline of September 11th.

Again, I'd like to thank you again for coming. I'd like to thank you for hearing and listening and most of all understanding that California is committed to preventing the entry of exotic pests wherever possible. Thank you.

(Applause.)

MR. LIDSKY: Mr. Charley Wola from the Avocado Commission, please.

(Pause.)

MR. WOLA: Good morning. Thank you for the opportunity to address the hearing.

I want to first give a little background on myself because I think it will provide a better context of my comments. I think you need to know that I'm a former Marine. I had a career in the Marine Corps before I started farming.

I've been farming mostly in avocados, but in citrus and in flowers for over 25 years. I earn my living from farming. I've been involved as a participant with the California Avocado Commission for over 20 years. So I'm not new to these processes.

I've been elected by growers in my district to serve on the Avocado Commission and I've been elected by the Commissioners to serve as their Chairman. In that capacity I represent over 6,000 growers, avocado growers, in the State of California.

You need to know that I come here very, very frustrated and that I suspect that that will show in my testimony. I need to remind everybody that from the perspective of our industry this is not a trade issue. Over and over again both people in Washington, the press and everybody, keeps accusing us of it being a trade issue.

You can check the record and it's very, very clear we have never said one word about importation of avocados

from other producing countries, mainly from Chile and New Zealand. So this issue to us is a very serious, a pest issue, not a trade issue.

I think our President and the scientists who followed him made it clear that there are some shortcomings in the Department's avocado import program. I guess what makes it worse is the USDA's own track record on failure when it comes to preventing introduction of exotic pests into the United States.

The two major pests that we have in California avocados is persea mite and avocado thrip. We got them from Mexico. Those pests were identified by the U.S. Department of Agriculture in border inspections in Texas, but they never did anything to designate them as a quarantined pest.

Now we have a proposed rule and it says that the mite and the avocado thrip don't meet the definition of a quarantined pest. Technically, that's true because they're now in California but it wasn't true when they were discovered at the border.

The Mexican fruit fly, as you know, infects a broad range of agricultural crops including oranges, limes, apples, pears, peaches and avocados. There's over $3.3 billion worth of crops in the United States that are at risk over fruit flies. The cost to fight these -- to monitor and fight them -- we've spent over $256 million of both state

and Federal funds for fly detection and eradication on these programs just in California alone.

It's estimated that if we had an unchecked fruit fly infestation in this state now it could cost up to $1.9 billion. As growers we know this. We've had first-hand experience with the Mexican fruit fly.

If you remember, I know it's been just a little over two years ago two Mexican fruit flies in Fallbrook, we were quarantined. Two flies. We couldn't harvest our fruit unless we had bait treatments that went on for months, not to mention the protocols and the problems that occurred from a lack of scientific information that made the fruit fly infestation and quarantine far worse than it needed to be.

But if there's two fruit flies found in a Mexican avocado grove that's certified for export to the United States they can treat their groves and still ship. We had to go through a period of baiting and treating for two life cycles. It seems to us that that's a double-standard. It's not fair.

Let's look at another standard, the phyto-sanitary rules that are applied by the USDA and the Mexican Department of Agriculture.

For years we've been demanding that the USDA do a proper job of assessing the risk associated with the Mexican avocado pest and we believe that the Department's failure is

a violation of the very principles that the USDA is supposed to be upholding. Again, it just seems to be unfair.

We think that the USDA officials need to be more serious about the risks than their counterparts in the Mexican Department of Agriculture. From our perspective, for them it's just a game. Let me try to explain what I'm talking about.

We have proved that the Mexican plant officials have refused to take this issue seriously. We requested over four years ago for to get access into Northern Baja for California avocados and asked that USDA to initiate those steps to clear the way for us exporting into Mexico.

As you may or may not know, there's a ready market for California avocados in northern Mexico, yet we are prohibited from shipping into that country. For three years we didn't hear anything.

In November of 2000, in the Avocado Commission Boardroom, senior representatives from the U.S. Department of Agriculture pledged that they would aggressively pursue our getting into Mexico. Those talks prompted Mexico to prepare a risk assessment for California avocados. It was recently forwarded to the U.S. Department of Agriculture. The document plainly reveals that the Mexican plant officials consider the quarantined security to be a joke. It's simply unbelievable.

The Mexican risk assessment stated that California avocados would not be allowed into Mexico until procedures were in place to protect the Mexican avocado growers from being infested by -- are you ready for this? -- seed moth, seed weevils, introduced from California. We don't have them. That's one of our major concerns about the issue that's before us now. I believe the Mexicans know full well that we do not have these pests in California. That's why we're incensed.

There's no credible scientific evidence existing showing these pests are present in California and the USDA knows it. But, by contrast, these quarantined pests in Mexico are well documented through the scientific literature.

The Mexican pest risk assessment is an affront to all California avocado growers. Mexico's refusal to take seriously international rules governing the establishment of legitimate phyto-sanitary measures must not be tolerated by the Department of Agriculture. In the name of balance and fairness, not to mention science, the USDA must reject the Mexican's bid for expansion as long as the U.S. avocados are permitted [sic] entry into Mexico. It just seems fair.

Turning back to the proposal being discussed here now and the pest threat it poses to California avocado growers. Let's look at some of the potential dangers.

Expansion of the shipping area would place potential infested avocados 200 miles from the California border. St. George, Utah is just a quick shot down into California.

For the first four years of the program we know that fruit has each year been illegally shipped out of the designated shipping areas, full well knowing that it's improved over the recent years.

But it's one thing for a box of avocados to move illegally from Chicago to Minnesota in the winter than it is to move from St. George, Utah to California. The Department's proposal from our perspective as growers is a high-stakes game of chance and California avocado growers are the ones that are accepting the risks, unacceptable risks.

As one of the growers here in California, I cannot -- I suppose more from the standpoint of not only my own future as a grower and a farm manager, but the future of those growers that I have been elected to represent. I cannot allow this to go forward.

What's frustrating about it is that there are so many growers out there and they're perspective is that it's a done deal, that the Department has made up their mind and notwithstanding the striking, powerful scientific information and data that's been provided to the Department,

many of the growers feel it doesn't make any difference.

It's obvious to me that at some point previously somebody in the Department either implied or -- I don't know if I can in good conscience say made a deal, but insinuated to the Mexican growers that they'd get two more months and now we're faced with the deal of figuring out -- or the Department's figuring out a way to make the two months fit into a scientific hole, trying to shove a square peg in a round hole.

So let's just take a look at some of the things that I think as a grower have to be taken care of.

First of all, I believe that the Department has to initiate an external emphasis, external peer review, of the pest risk assessment for a couple of reasons.

As a matter of fact, I made that request of Secretary Glickman back the first time around when we did this because to me when I look at the presentation in the risk assessment everything's made on estimated probabilities. You don't have to be a rocket scientist to figure that out. You can get it to come out however you want by just making your estimate be -- make it come out.

The other thing I can't figure out is that if the Department feels so confident of their risk assessment why are you afraid to have peer review? I don't understand that. It was offered to me recently in my visit in March

that it did have peer review. It had peer review from other scientists within the Department. That's like they're having the bookkeeper be the auditor.

It's been mentioned a number of times, you've got to adopt and formalize procedures for cutting the fruit. Again, the science is overwhelming. You can't just cut them in half and look at them and toss them in the trash bin, it's not good enough. You've got to work on getting training not only of the people that are doing that at the site in Mexico but also the inspectors at the border.

To me the Department has got to have a legitimate schedule for the timing of the pest surveys and require everyone who's doing the trapping to do it correctly. You know, not -- washing the traps out with soapy water and not cleaning them, you know, on the one hand you'd say, well, that's just the way life is. Well, it's not.

There's too much at risk for us to be so cavalier to have those kinds of situations going on and it being the justification for the expansion and from our -- from the grower's perspective in increasing our risk. It's simply not fair. Again, we believe that you have to standardize the fruit fly treatment protocols, putting domestic producers on an equal basis with those in Mexico.

One of the other things that's not addressed, at least to my recollection, in the proposal or anything else,

is what is the Department doing to get the resources for the enforcement at whatever kind of expansion is done?

I mean are we going to have to go through the same thing -- by your own charts, when it first started that the illegal shipments out of the area were very, very high and you all took and averaged them down so it doesn't look like a big thing, but when you get within 200 miles of California that thing keeps getting bigger and bigger.

In closing, let me kind of review a couple of points. Both in reading the proposed rule and in the short presentation that was here, for something that's supposed to be scientific and rational and logical it's interesting the terrific spin that can be put on the thing --

A PARTICIPANT: Good morning. I don't have a formal presentation to make, but as a grower in the Fallbrook area I really feel it's important I emphasize the importance that just the presence of two flies in Fallbrook caused 70 square miles to be quarantined where I had fruit that I had to throw on the ground since I couldn't market it.

So you have to appreciate that maybe one fly isn't important but one fly to a grower can really be a serious problem.

You've heard before I think the effect of the thrips and the mites, and I have experienced both of them,

I've had fruit downgraded for the presence of thrips and I have had tree damage from the mite infestation.

I have spent additional money trying to combat this and I think it's something that you need to appreciate the effect that something like this from a phyto-sanitary sanitary standpoint, should it get through all of this great system we have, to try and control the infestation that any minor error could really cause serious damage to the growers. Thank you.

(Applause.)

MR. LIDSKY: Thank you.

Marty Warren, please.

(Pause.)

MR. WARREN: My name is Arthur Martin Warren Carillo and don't let the Latino name influence you. I am an American first and my allegiance is to the U.S.

Before I start this little thing, I want to say that all of the data that was put on the screen one would think that that would be coming from our Latino friends here. I might think that you guys are on their payroll because it seems that you're saying exactly what they would want to be saying to get their avocados into this country.

(Applause.)

I remember the first meeting we had down at the Embarcadero and there was a long litany of people coming up

saying how the introduction of Mexican avocados into the U.S. would be detrimental to their bottom line.

But I notice that during the hearing the panelists were daydreaming, doodling, one was even falling asleep. I didn't realize until after the meeting that the whole thing was a done deal. The first meeting and the meeting subsequent were just show, it's somebody high up in the Department has said that the Mexicans are going to get what they want, the bribes have been paid, the campaign contributions have been made and this thing is done.

Now since the early '90s two groups of insects have infected my orchard, the persea mite and the avocado thrip, the thrip being major this year. According to Citrigraph magazine quoting a study from the UC Davis campus, losses between $8 million and $13 million in '98 and '99. No major agricultural school in the country supports your process of allowing the Mexican avocados your risk assessment, the mathematical schemes used to show that everything is okay.

Yesterday your boss, Mr. Bush, was in New Mexico talking about the science of reading and I was wondering what happened to the science of sound agriculture? What you've presented is junk science.

Continuing on, we have a chemical double-standard here. Mexico still uses heavy, heavy-duty chemicals,

chemicals that have been outlawed in this country, pesticides that have been outlawed in this country, since the early '70s, DDT being a major one.

I was wondering do you recall -- since you're all from the East Coast you probably didn't hear it -- in the spring of this year 26 people in Riverside got sick from Mexican cantaloupes and two died from salmonella. A few years ago in Houston from berries from Guatemala, salmonella again killed a couple of people in Houston.

Whereas the growers in this country cannot use the chemicals that these people are allowed to use. We have a double-standard here.

My question is, is when these avocados get into Utah how are you going to guard the borders? There's been a number of containers of Mexican avocados found outside of the quarantined area of the allowed area so far. Of course, the shippers deny any responsibility or knowledge that they were out of the area illegally.

I was wondering how would the consuming public be able to tell a Mexican avocado from a California avocado? I was perhaps given the chemicals the Mexicans put in their fruit, little stickers with skull and crossbones might be able to help the consumer notice which fruit is which.

When these avocado pests do get into our orchards and into the Central Valley and a $25 billion a year

industry is destroyed who will indemnify us? Who will compensate us for our loss, for decisions made by you people who have no financial risk attached to this? You will be sitting back in the Delmarva Peninsula --

(Applause.)

-- in your fat government retirement saying, "Oops! We screwed up," while we're all here bearing the brunt of all of this. You have to be responsible, but how can somebody who has no financial impact in this know what we're going through? Thank you.

(Applause.)

MR. LIDSKY: Thank you.

Our next speaker is Laura Eggering. I hope I'm pronouncing that right.

(Pause.)

MS. EGGERING: Good morning. My name is Laura Eggering, "E" as in Edward-"g" as in girl-g-e-r-i-n-g.

I wasn't sure if I was going to speak this morning and after all of the eloquent speakers I'm convinced that I don't need to, but some people have said I have a big mouth so I'm going to speak, anyway.

Good morning and thank you for allowing us to share our input with you. I am a grower in Southern California. I have in the last two years been on the verge of being placed under quarantine. Fortunately, my ranch was

out of the area within miles but close enough to make me nervous. Again, the season is coming close where I'm getting nervous again.

I think that our representatives from the California Avocado Commission have said everything that the growers have wanted you to hear, which is probably one of the main reasons why you don't see a lot of us here today because these are people that speak better than we do.

The reason I did come up is I'm a little bit concerned now after hearing all of the speakers and hearing your presentations. I believe it was the second gentleman to speak from USDA -- talked about the 1995 risk assessment and in particular the P-5 that you referred to, you said that additional states that were being proposed to be allowed into this segment were not going to affect the growth of pests or the fruit fly in particular is what I'm thinking of.

I'm originally from Missouri, which is one of the states being proposed, the wonderful Show Me state. I've got to tell you guys, Missouri in March is hotter than hell and there is no ice that's going to keep larvae from producing and the same thing in October, it's hot. It's warm enough for these animals or insects to grow.

One thing that concerns me, you were using this 1995 study and yet when I came in today I picked up one of

your brochures and it is dated October 2000. I'd just like to end with this statement that is from your own article of APHIS PPQ industry alert dated October 2000.

Referring to the states being allowed additional coverage for import states, "However, moving or shipping these avocados to other states poses a risk of introducing pests that could cause millions of dollars of damage to U.S. crops."

As a grower I'm just curious why five years later this information is stating the opposite of what you reported to us earlier? My other concern is who is going to enforce the rules and regulations that you've proposed? Is this going to come out of me, the taxpayer's money? If and when these regulations are abused or broken who's going to enforce them?

Do we have our standards set up? You can't dictate to another country our standards. Who's going to enforce them? I don't know. I haven't heard that yet. Is it going to be self-policing? Is it going to be the fox guarding the chicken coop? Again, I as a grower haven't heard it. All I know is I'm getting nervous because this is the time of year where I'm going to sweating, am I going to be in quarantine this year or not?

So, please, consider the fact that it is an economical issue and by your own statements, yes, it could

cause millions of dollars of damage to our own country. Thank you so much.

(Applause.)

MR. LIDSKY: Thank you.

Kathleen Thuner, please.

(Pause.)

MS. THUNER: Good morning. My name is Kathleen Thuner, T-h-u-n-e-r. I'm the San Diego County Agricultural Commissioner.

A little bit of my background, for 31 years I have been a State Plant Quarantine Officer and I'm very proud of that. For the last 18 years I have been the Agricultural Commissioner for the County of San Diego. I am one of those people who remembers modeling that said there would be no fruit fly problem north of the Tahachapies. I think we know that that didn't work. We have a Governor who I think earned a name as a result of it.

But, in any case, the County of San Diego Department of Agriculture Weights and Measures, strongly opposes both the USDA proposal to allow the importation of the fresh Mexican Hass avocado into 12 additional states and to extend the length of the shipping period by two months.

The duties of our office include enforcing state, Federal and local laws and regulations regarding plant pest quarantine, animal health, organic law and pesticide use.

San Diego County Agriculture is currently valued at over $1.2 billion a year, of which avocados constitute approximately 12 percent or $149 million. San Diego County produces 44 percent of all of the avocados grown in the State of California. As you know, California leads the nation in avocado production, having 85 percent of the national crop.

San Diego County has trapped for fruit flies year-round since 1979. The county has been repeatedly quarantined for the finding of flies, the latest being the Fallbrook Mexican fruit fly quarantine in October of 1999 that stretched to June of 2000. 72 square miles were quarantined, constituting over 1,400 growers with a value of crop under quarantine in excess of $49 million.

Reports to my office indicate that over $3 million of fruit simply had to fall to the ground. It had to fall to the ground because of basically three reasons, the first being the pests got in, the second being the commodity treatments that USDA had available were not available for avocados, they were not available for most of the crops that were under quarantine and the third being the only thing that was available then was prior to harvest treatment.

There was no post-harvest treatment available for these crops. As a result, these people had no other option other than to sit there and watch their crop fall to the

ground and disc it under. I really believe that that in itself represents the biggest problem with this proposal.

I don't understand how the USDA can take a risk when there isn't any option to control it that's really viable for the community being affected by the risk. Post-harvest commodity treatment we were promised would be a priority at the USDA. I have not seen that in anything that has come down in the last two years. That's a serious problem.

We found ourselves in the position of telling people, "Yes, we have a commodity treatment" one week and, "No, we don't" the next. We were unable to provide them with cold treatment because it had never been tested for some of these crops. We couldn't use fumigation because when we tested fumigation -- and I want to thank you for doing that work -- it wasn't viable against Mexican fruit fly in avocado. It didn't kill the pest.

Now without a commodity treatment the risk becomes extraordinarily different than the risk that was presented here. This is not simply about avocados, either, it's about an awful lot of other crops produced in this county. This county, frankly, represents one of the leading counties in agriculture in the State of California, we rank number seven. We're not small, but we're very proximate to a really big problem.

We went to Senator Feinstein and she got additional staff and I'm appreciative of the fact that the USDA is working hard to staff those positions. I know recuitment's tough, I have to do it in my department, besides living in this part of the country means you've got to pay an awful lot for a house and, unfortunately, the Feds nor I are able to supplement housing costs.

We plan to submit extensive written comments and because I've been off for five weeks on medical leave I don't have them and I apologize. We will have them for you.

I wanted further to say though that your current proposal states that winter shipping during the months of November through April poses minimal threat for importation and infestation from the Mexican fruit fly. San Diego County data, our data -- and I understand we do receive some support from the USDA for the trapping that we do and I want to thank you for that -- from 1991 to 2000, 66 single fly finds were recorded.

During the winter shipping period from November to February 29 Mexican fruit flies were found, that's 44 percent of all of the flies we found. During your proposed extended winter shipping period from November to April, 37 flies, or 56 percent, of all of the flies we found were found.

During the so-called winter shipping period the

proposal states that the risk of importation and infestation is lowest. However, San Diego County reports more than half of the Mexican fruit fly finds that we've had during that period. The data clearly I believe shows that California is at risk for importation and infestation year-round. Extending the winter shipping period increases this Mexican fruit fly risk to California.

If it's as you describe that avocados are -- I believe you used the term "poor host for fruit flies" my question then is why then was it necessary to impose a quarantine on 11,000 acres of growing grounds in Northern San Diego County when the finding of two flies in Michoacan would not have had the same consequence. Thank you.

(Applause.)

MR. LIDSKY: Thank you.

Our last registered speaker is Roy Keenan. After Mr. Keenan we'll call any persons who have not registered to make any comments, if they care to do so.

(Pause.)

MR. KEENAN: Good morning. My name's Roy Keenan, K-e-e-n-a-n.

As a California grower I stand before you this morning as an individual to express my very great concern about the proposed expansion of the Mexican program. However, my primary purpose is to preclude any impression on

your part that the absence of an auditorium full of California growers, in any way reflects their lack of concern about this issue.

The California avocado industry is a mature industry and having lived with this "Mexican problem" for four years its growers understand the vitriolic response to this proposal will not influence the outcome in any shape or fashion, but we as growers are kept very well informed by our Commission, the Avocado Commission, and we look to the Commission to be our spokesman in this matter.

To that effect, the Commission does and has done a powerful job in representing the 6,000 California growers. For that reason there's a real confidence level on the part of those growers that the Commission is going to effectively represent them as they did this morning about this issue. There's no need for masses of people to show up and shout and wave their hands and so because that won't solve anything.

So on behalf of the 6,000 growers of California avocados I urge the USDA to base any decisions about this matter on sound scientific principles and at the very least scale down the proposal -- proposed expansion to err on the safe side. The safe side being 6,000 California avocado growers and the hundreds of thousands of other growers of perishable commodities that could be affected by any

disastrous outcomes of this proposed expansion. Thank you very much.

(Applause.)

MR. LIDSKY: Thank you.

Are there any folks in the audience that have not registered to speak that would like to come up to the podium and make any comments?

(Pause.)

MR. BRENNAN: Good morning. My name is Bill Brennan, B-r-e-n-n-a-n.

Myself and my wife, Toni, operate Coyote Hills Ranch. We have four avocado groves in Valley Center and one is Escondito. I wasn't prepared to speak today but after your presentation about the very low level of intercepted fruit being smuggled into control areas I have one question; Do the smugglers have to pay a fee when they register or is it voluntary?

At any point, there's been comments about a low turnout of growers at this meeting today. Some feel that the growers feel confident that we're represented well and I think we have been represented well, but I don't know that it's -- I don't think it's apathy, I don't think it's confidence in our representation, I think it's resignation. I think the grower in Southern California has given up.

Four years ago we filled four exhibit halls with

growers. I felt the evidence was compelling that you review your systems approach, yet you went right ahead and did it. There was no reaction by the USDA for what I felt -- and, you know, surely I have a bias opinion -- an overwhelming amount of evidence that there was too high of a risk to the largest agricultural region in the world, California and the San Joaquin Valley will eventually be impacted by this.

I work with computers. You introduced the Monte Carlo sample method for the systems approach, you based it on two models; one model of no control at all, zero controls enacted and the second you modeled the systems approach. It's a practice in modeling, we us in computers, we call "benchmarking."

It's a foregone conclusion, the first thing that happens is you model the existing system. You did not. That tells me there is an agenda. Why would you not model the existing quarantine, the quarantine that was in place for 80 some odd years?

We've already shown that we've been impacted by infestations of persea and thrip in just the last few years. The Monte Carlo method could have been applied to an existing system and if you would have said the risk of infestation is one in a million years or whatever we could have easily proved that your model was not effective.

But you've modeled two non-existing environments,

that of no control of Mexican fruit and one of a proposed systems approach, at that time neither one existed. Again, one point, in computer science benchmarking an existing system whenever available is the first thing that happens. I can't believe that the USDA would not have done the Monte Carlo modeling method on the current quarantine that was in place for 80 years. Thank you.

(Applause.)

MR. LIDSKY: Thank you.

Are there any other persons that would like to -- please come up.

(Pause.)

MR. SCHNURER: My name is George Schnurer, that's spelled S-c-h-n-u-r-e-r. I'm an avocado grower in the Ramona area.

The presentation that was given by the USDA made reference several times to very low risk. How low is low? I think just two fruit flies found in Fallbrook represents a low risk, but for the 70 square mile area that was quarantined the growers do not consider that a low risk.

I found it very interesting that just yesterday there was an article that appeared in the San Diego Union that Mexican authorities are fearful of a virus from U.S. potato exports that are going into Mexico and as a result of this fear they plan to ban all imports of U.S. potatoes into

Mexico. Just last year there was some 68 million pounds of U.S. potatoes imported into Mexico from the United States.

I think they're taking a prudent attitude about this potential risk. I think we should do the same thing with regard to the potential risk that U.S. growers are facing from the importation of Mexican avocados.

Here's a copy of the article for you.

(Applause.)

MR. LIDSKY: Any other commentor from the audience, please.

(Pause.)

MR. FRANCIS: Good morning, panel. My name is H. Leonard Francis, F-r-a-n-c-i-s.

I'm an avocado grower in the Tamacula (phonetic) and in the Palma Valley areas of Southern California. I apologize for not being here any sooner. It happens to be payday at my company and I had a couple of other stops in Coozer (phonetic) Canyon to take care of.

I do not know what the various other presentations have covered, but in all of the analysis that I have done of your proposed expansion of the Mexican avocado introductions to the U.S. I have to go back to what the other fellow said earlier, that it's resignation on the part of growers that they're not here. I've felt it.

I'm hoping like hell that the Avocado Commission's

presentation does go ahead and convince you that you've really way over expanded this program that you wish to.

But in light of that, in reviewing your program the two major concerns I have, accepting and resigning to the fact that you're going to do whatever you want to do, is to at least go on record with Utah and with April. Utah is too darn close, it is too much of a major transportation area into Southern California.

April is definitely every year too warm. There's times we have heat spells in April. Every April we have over five to 10 days over 85 degrees. We certainly have the temperatures as the mean temperatures for allowing the incubation of eggs in avocados to, in fact, hatch and emerge and thrive if such an avocado was imported, for example, from Utah into Southern California avocado area. Thank you.

(Applause.)

MR. LIDSKY: Thank you.

Anyone else, please?

(No response.)

Well, I'm going to assume that there are no other persons from the audience that wish to speak. If you have additional comments, as we indicated earlier, the close of the comment period is September 11th. The address for submitting comments appears in the proposed rule of July 13th.

I want to thank everyone for coming out today. There were a lot of very thought provoking comments presented that the Department is going to be taking a very hard look at. It's because of this process that it enables us to thoroughly review what you've said and determine what should be the right thing to do.

If there are no other persons that wish to speak we will adjourn today's hearing early in accordance with the hearing procedures.

(No response.)

Again, thank you all for coming and this hearing is now adjourned.

(Whereupon, at 11:20 a.m., the hearing in the above-entitled matter was adjourned.)

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Mexican Hass Avocado Import Program
Name of Hearing or Event

00-003-2
Docket No.

Escondido, California
Place of Hearing

August 16, 2001
Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 74, inclusive, constitute the true, accurate and complete transcript prepared from the tapes and notes prepared and reported by Carey Leffler, who was in attendance at the above identified hearing, in accordance with the applicable provisions of the current USDA contract, and have verified the accuracy of the transcript (1) by preparing the typewritten transcript from the reporting or recording accomplished at the hearing and (2) by comparing the final proofed typewritten transcript against the recording tapes and/or notes accomplished at the hearing.

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