

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 301, 305, 318, and 319

[Docket No. 03–077–1]

#### Treatments for Fruits and Vegetables

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations to revise the approved doses for irradiation treatment of imported fruits and vegetables. This proposal would establish a new minimum generic dose of irradiation for most arthropod plant pests, establish a new minimum generic dose for the fruit fly family, reduce the minimum dose of irradiation for some specific fruit fly species, and add nine pests to the list of pests for which irradiation is an approved treatment. These actions would allow the use of irradiation to neutralize more pests and to neutralize some pests at lower doses. Furthermore, we are proposing to provide for the irradiation of fruits and vegetables moved interstate from Hawaii at the pest-specific irradiation doses that are now approved for imported fruits and vegetables. We are also proposing to provide for the use of irradiation to treat fruits and vegetables moved interstate from Puerto Rico and the U.S. Virgin Islands. These actions would allow irradiation to serve as an alternative to other approved treatments for additional fruits and vegetables moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands. Finally, we are proposing to add irradiation as a treatment for bananas from Hawaii and to add vapor-heat treatment as an optional treatment for sweetpotatoes from Hawaii. These actions would provide an alternative to the currently approved treatments for those commodities while continuing to provide protection against the spread of

plant pests from Hawaii into the continental United States.

**DATES:** We will consider all comments that we receive on or before August 9, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- EDOCKET: Go to <http://www.epa.gov/feddoctet> to submit or

view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the “View Open APHIS Dockets” link to locate this document.

- Postal Mail/Commercial Delivery:

Please send four copies of your comment (an original and three copies) to Docket No. 03–077–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–077–1.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Inder P. Gadh, Treatment Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

#### SUPPLEMENTARY INFORMATION:

##### Background

The phytosanitary treatments regulations contained in 7 CFR part 305 set out standards and schedules for treatments required in 7 CFR parts 301, 318, and 319 for fruits, vegetables, and

articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States. Within 7 CFR part 305, the irradiation treatments subpart (§§ 305.31 through 305.34, referred to below as the regulations) sets out standards and minimum doses for irradiation treatment for imported fruits and vegetables and for regulated articles moved interstate from quarantined areas within the United States, along with other requirements for performing irradiation treatments.

We are proposing to make several amendments to the irradiation treatment regulations for imported fruits and vegetables, for fruits and vegetables moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands, and for regulated articles moved interstate from areas quarantined for Mexican fruit fly or Mediterranean fruit fly. We are also proposing to provide for the use of irradiation treatment for bananas moved interstate from Hawaii and to provide for the use of a vapor heat treatment for sweetpotatoes moved interstate from Hawaii. The changes we are proposing are discussed below by topic.

#### Irradiation Treatment for Imported Fruits and Vegetables

##### *Generic Minimum Irradiation Dose for Most Arthropod Plant Pests*

The Animal and Plant Health Inspection Service (APHIS) published a notice of policy titled “The Application of Irradiation to Phytosanitary Problems” in the **Federal Register** on May 15, 1996 (61 FR 24433–24439, Docket No. 95–088–1). In that notice, among other things, we stated that we may develop minimum irradiation doses that are generic to a pest group or a commodity. We also stated that APHIS’ Plant Protection and Quarantine (PPQ) program will confer with the U.S. Department of Agriculture’s (USDA) Agricultural Research Service (ARS) concerning the adequacy of treatment data, research protocols, and treatment design and that ARS will identify or concur with the minimum dose for efficacy at the level defined by PPQ as providing quarantine security for a pest or complex of pests.

Currently, the regulations for irradiation of imported fruits and vegetables specify minimum doses for 11 fruit flies and the mango seed weevil. The doses required range from 150 gray

to 300 gray. The fact that the required irradiation doses are specific to plant pests rather than the commodities they are associated with reflects the fact that the effectiveness of irradiation treatment is dependent entirely on the dose that is absorbed by the commodity. Specific characteristics of the fruits or vegetables being treated, which may need to be considered in developing other phytosanitary treatments, are irrelevant to the effectiveness of irradiation as long as the required minimum dose is absorbed.

This approach provides importers who must treat fruits and vegetables for plant pests prior to their entry into the United States with some flexibility: As long as the only pests for which a commodity is required by the fruits and vegetables subpart of 7 CFR part 319 (§§ 319.56 through 319.56–8) to be treated or be subject to a systems approach prior to importation into the United States are pests for which irradiation is an approved treatment, then that commodity may be imported into the United States after it undergoes irradiation in accordance with § 305.31, with no need for additional rulemaking. However, it is not uncommon that multiple plant pests of quarantine concern are associated with a fruit or vegetable approved for importation into the United States; irradiation may be currently listed as an approved treatment for only some of these plant pests. In such cases, the fruit or vegetable must either undergo a different treatment capable of neutralizing all the pests or must undergo multiple treatments to neutralize all of those pests.

A generic minimum irradiation dose that is approved to treat a group of plant pests would solve this problem by allowing, in many cases, irradiation to be used as the sole treatment for the pests associated with a particular fruit or vegetable, as long as it could be shown that any quarantine pests identified as being associated with the fruit or vegetable were members of the group of plant pests that were approved for treatment by the generic minimum irradiation dose. Because the generic minimum dose would be approved for a group of plant pests, a pest-specific minimum dose would not have to be approved through the rulemaking process before irradiation could be used to treat the pest or pests of concern associated with a commodity. Thus, such a dose would facilitate international commerce while continuing to provide phytosanitary protection against the group of plant pests that are neutralized by the dose.

In consultation with ARS, PPQ has determined that a dose of 400 gray is sufficient to neutralize all arthropod plant pests other than pupae and adults of the order *Lepidoptera*, for which we lack sufficient information to establish a safe generic dose. Therefore, we are proposing to establish 400 gray as a generic minimum dose for arthropod plant pests except pupae and adults of the order *Lepidoptera*. Irradiation treatment of fruits and vegetables with the proposed minimum dose of 400 gray would have to be conducted in accordance with all the current requirements for dosimetry, packaging, and recordkeeping in § 305.31.

We would not provide for the use of the proposed generic minimum dose to treat mites, mollusks, nematodes, and plant pathogens, none of which are arthropod plant pests, because the irradiation doses necessary to neutralize those plant pests are either not determined or typically much higher than for arthropod plant pests.

ARS and APHIS will continue to review data relating to recommended minimum doses for pupae and adults of the order *Lepidoptera*, and if we determine that these plant pests can be neutralized with the generic dose included in this proposal, we will undertake rulemaking to allow them to be treated with the generic dose. However, as indicated above, sufficient information to establish a generic dose for pupae and adults of the order *Lepidoptera* does not exist at this time.

We believe the proposed generic 400 gray dose for arthropod plant pests, except pupae and adults of the order *Lepidoptera*, would be a conservative requirement given other available evidence on the doses required to neutralize a wide variety of plant pests. The International Plant Protection Convention (IPPC) Guidelines for the Use of Irradiation as a Phytosanitary Measure (ISPM Publication No. 18) lists recommended minimum dose ranges for 8 types of plant pests, excluding mites, mollusks, nematodes, plant pathogens, and pupae and adults of the order *Lepidoptera*; these recommendations were developed based on literature reviews by G.J. Hallman<sup>1</sup> and the research summarized in the International Atomic Energy Agency's International Database on Insect Disinfestation and Sterilization.<sup>2</sup> The proposed 400 gray minimum dose

would be equal to the upper bound of the recommended minimum dose range for stored product beetles of the family *Coleoptera*; it would be at least 100 gray higher than the recommended minimum dose ranges for all the other pests for which the generic dose would be an approved treatment. We believe that the proposed generic minimum dose of 400 gray would neutralize the targeted arthropod plant pests effectively.

To accomplish this change, we would add an entry for "Plant pests of the phylum *Arthropoda* not listed above, except pupae and adults of the order *Lepidoptera*" to the bottom of the table of approved irradiation doses in § 305.31(a). Because the heading of that table presently reads "Irradiation for Fruit Flies and Seed Weevils in Imported Fruits and Vegetables," we would revise it to read "Irradiation for Certain Plant Pests in Imported Fruits and Vegetables." We would also revise the section heading of § 305.31 to read "Irradiation treatment of imported fruits and vegetables for certain plant pests."

We would retain the list of pests for which lower doses of irradiation are an effective treatment in § 305.31(a), so that the generic minimum dose of 400 gray would exist as an option for treating any arthropod plant pest, except pupae and adults of the order *Lepidoptera*, for which irradiation is not approved as a treatment elsewhere in § 305.31(a).

The generic minimum dose would be available as an option for persons wishing to import fruits and vegetables that are affected by arthropod pests, except pupae and adults of the order *Lepidoptera*, that are not listed in the regulations. However, APHIS does not intend to halt research on the doses necessary to neutralize individual pests for which the regulations do not currently prescribe a minimum dose. (For example, in this proposal we are proposing to reduce the minimum doses required to treat several fruit fly species and proposing to add minimum doses to treat nine plant pests for which irradiation has not been approved as a treatment before, as described later in this document.) If the generic minimum dose of 400 gray for most arthropod pests that we are proposing is adopted in a final rule, APHIS will continue to evaluate data on pest irradiation in consultation with ARS and will, if appropriate, undertake rulemaking to add new minimum doses for individual pests to the regulations.

#### **Generic Minimum Dose for Fruit Flies and Minimum Dose Reductions for Individual Fruit Fly Species**

Although the generic minimum dose proposed above could be used to treat

<sup>1</sup> See "Irradiation as a quarantine treatment," in *Food Irradiation Principles and Applications*, Molins, R.A. (ed.). New York: J. Wiley & Sons, 2001, p. 113–130, and "Expanding radiation quarantine treatments beyond fruit flies," *Agricultural and Forest Entomology* 2:85–95, 2000.

<sup>2</sup> Available at <http://www-idaa.iaea.org>.

many arthropod plant pests, it is important that required irradiation doses for plant pests be set at the lowest effective level. Higher doses of irradiation treatment cost more to administer, and irradiation causes many fruits and vegetables to undergo changes in color and texture that increase at higher doses.

Accordingly, ARS has undertaken research to determine whether fruit flies currently approved to be treated with irradiation in the regulations can be neutralized at lower doses than are presently required in § 305.31(a), and whether species of fruit flies that are not currently listed in the regulations can be neutralized at a lower dose than the proposed 400 gray generic minimum dose for arthropod pests other than pupae and adults of the order *Lepidoptera*.

This research demonstrated that all fruit flies of the family *Tephritidae* would be neutralized by a dose of 150 gray. Therefore, we are proposing to add the entire family *Tephritidae* to the list of pests for which irradiation is an

approved treatment, and to set the required irradiation dose for those fruit flies at 150 gray. This change would reduce the required dose for the Oriental fruit fly (*Bactrocera dorsalis*), for which a 250 gray dose is currently required; the Mediterranean fruit fly (*Ceratitis capitata*), for which a 225 gray dose is currently required; and the melon fly (*Bactrocera curcurbitae*), for which a 210 gray dose is currently required. It would also set a dose for irradiation treatment for any fruit fly not currently listed in § 305.31(a) that is lower than the proposed generic minimum dose of 400 gray for arthropod pests other than pupae and adults of the order *Lepidoptera*.

The research ARS undertook also demonstrated that the proposed 150 gray generic minimum fruit fly dose would be higher than necessary to neutralize certain fruit flies. Specifically, the research found that the Mexican fruit fly (*Anastrepha ludens*) and the Caribbean fruit fly (*Anastrepha suspensa*) are neutralized at 70 gray and that the West Indian fruit fly

(*Anastrepha obliqua*), the sapote fruit fly (*Anastrepha serpentina*), the Jarvis fruit fly (*Bactrocera jarvisi*), and the Queensland fruit fly (*Bactrocera tryoni*) are neutralized at 100 gray. Accordingly, we are proposing to allow those fruit flies to be treated at those lower doses rather than at the proposed generic fruit fly minimum of 150 gray.

To accomplish these changes, we would add a new entry to the table in § 305.31(a) for "Fruit flies of the family *Tephritidae* not listed above" and set a minimum dose of 150 gray for those fruit flies. We would also revise the minimum doses approved to treat the species mentioned above.

#### *Proposed New Doses for Nine Other Plant Pests*

ARS research also indicates that irradiation can be used as a treatment for nine plant pests not currently listed in § 305.31(a). These pests are listed below, along with the irradiation dose at which the ARS research indicates they are neutralized:

Scientific name	Common name	Dose (gray)
<i>Brevipalpus chilensis</i> .....	False red spider mite .....	300
<i>Coccus viridis</i> .....	Green scale .....	400
<i>Conotrachelus nenuphar</i> .....	Plum curculio .....	92
<i>Crotophlebia ombrodelta</i> .....	Litchi fruit moth .....	250
<i>Cryptophlebia illepidia</i> .....	Koa seedworm .....	250
<i>Cylas formicarius elegantulus</i> .....	Sweetpotato weevil .....	165
<i>Cydia pomonella</i> .....	Codling moth .....	200
<i>Grapholita molesta</i> .....	Oriental fruit moth .....	200
<i>Rhagoletis pomonella</i> .....	Apple maggot .....	60

We are proposing to add these pests to the table in § 305.31(a), along with the doses of irradiation that are sufficient to neutralize them. Irradiation treatment for these plant pests would be conducted in accordance with the other provisions of § 305.31.

Currently, the regulations in § 319.56–2(k) authorize the use of irradiation as a treatment for imported fruits or vegetables to neutralize "one or more of the 11 species of fruit flies and one species of seed weevil listed in § 305.31(a)." To reflect the proposed changes to the pest list in § 305.31(a), we would revise the quoted text to read "one or more of the plant pests listed in § 305.31(a)." We would make a similar change to the introductory text of paragraph (a) in § 319.56–2x.

#### **Irradiation Treatment for Fruits and Vegetables Moved Interstate**

##### *Pest-Specific Irradiation Doses for Treating Fruits and Vegetables Moved Interstate*

The regulations in 7 CFR part 318 prohibit or restrict the interstate movement of fruits, vegetables, and certain other articles from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam to prevent the introduction and dissemination of plant pests into the continental United States.

The Hawaiian fruits and vegetables regulations (§§ 318.13 through 318.13–17) prohibit or restrict the interstate movement of fruits and vegetables from Hawaii to prevent the introduction and dissemination of plant pests into the continental United States. Section 318.13–4f of the Hawaiian fruits and vegetables regulations, titled "Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii," lists required

doses for irradiation treatment for certain fruits and vegetables and sets out facility approval, packaging, and commodity movement requirements.

We are proposing to remove the bulk of § 318.13–4f, because this section is currently duplicated in § 305.34 of the irradiation treatment regulations. In place of current § 318.13–4f, we would set out a single paragraph listing the commodities for which irradiation is an approved treatment and referring the reader to § 305.34 for instructions on how the treatment must be conducted. Because the section heading of § 318.13–4f currently reads "Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii," but the methods for irradiation treatment would only be set out in § 305.34, we would amend the section heading to read: "Irradiation treatment of certain fruits and vegetables from Hawaii." (Here and elsewhere, we are proposing to simplify

our section titles by removing references to administrative instructions.)

Because we would remove the substantive treatment provisions from § 318.13–4f and direct readers to § 305.34, we are also proposing to update a reference to movement under a limited permit “if the provisions of § 318.13–4f are met” in paragraph (b)(3) of § 318.13–3 to refer to § 305.34. We would make a similar change in the definition of *compliance agreement* in § 318.13–1.

In § 305.34, paragraph (a) lists the Hawaiian commodities for which irradiation is an approved treatment. Unlike the pest-specific required doses in § 305.31 of the irradiation treatment regulations for imported fruits and vegetables, the required doses in § 305.34 are specific to commodities. We have prescribed doses for specific commodities moved interstate from Hawaii, rather than for specific plant pests that are present in Hawaii and that must be neutralized to allow interstate movement, because the minimum doses that we require in our regulations were based on pest risk analyses that were also commodity-specific. The approved irradiation doses for certain fruits and vegetables in the Hawaiian irradiation regulations have been determined to be capable of neutralizing all the pests that might otherwise be introduced to nonquarantined areas of the United States via the interstate movement of these fruits and vegetables.

However, some of the fruits and vegetables for which we receive requests to allow interstate movement from Hawaii are only associated with pests listed in § 305.31(a). Those commodities could be effectively treated according to the pest-specific doses approved for the treatment of imported fruits and vegetables. Accordingly, we are proposing to amend § 305.34 to allow Hawaiian fruits and vegetables to be treated with irradiation for any pests listed in § 305.31(a) at the pest-specific doses listed there and in accordance with the other requirements in § 305.34.

As discussed above, as long as the only pests for which a commodity is required by the fruits and vegetables subpart of 7 CFR part 319 to be treated or be subject to a systems approach prior to importation into the United States are pests for which irradiation is an approved treatment, then that commodity may be imported into the United States after it undergoes irradiation in accordance with § 305.31, with no need for additional rulemaking. Similarly, as long as the only pests for which a commodity is required by the Hawaiian quarantine regulations to be treated or be subject to a systems

approach prior to interstate movement are pests for which irradiation is an approved treatment in § 305.31(a), then that commodity would be able to be moved interstate after it undergoes irradiation for those pests at the doses listed in § 305.31(a) and in accordance with the other requirements in § 305.34, with no need for additional rulemaking.

For commodities that are not currently allowed to be moved interstate under the Hawaiian territorial quarantine regulations, PPQ would conduct a risk assessment to determine whether irradiation alone or in combination with other phytosanitary measures can treat all the quarantine pests that might be associated with its interstate movement from Hawaii. If it was determined that irradiation would be an effective treatment for these commodities, they would be added to the list of commodities for which irradiation is an approved treatment in § 305.34(a)(1) through notice-and-comment rulemaking. If it was determined that irradiation in combination with other measures would be an effective treatment for these commodities, the regulations setting out the conditions for the importation of such commodities would refer to the provisions of § 305.34 and, if necessary, the pest-specific irradiation doses listed in § 305.31(a). (For example, we are proposing to allow the interstate movement of bananas from Hawaii that have been inspected for certain pests and treated with irradiation; the proposed regulations would be added to § 318.13–4i but would refer to the Hawaiian irradiation regulations in § 305.34 and the pest-specific irradiation doses in § 305.31(a). This proposed change is discussed in more detail below.)

To accomplish this change, we would redesignate the current text of § 305.34(a) as § 305.34(a)(1) and add a new paragraph (a)(2) that would read: “Any fruits or vegetables not listed in paragraph (a)(1) of this section that are required by this subpart to be treated or subjected to inspection to control one or more of the plant pests listed in § 305.31(a) of this chapter may instead be treated with irradiation. Fruits and vegetables treated with irradiation for plant pests listed in § 305.31(a) must be irradiated at the doses listed in § 305.31(a), and the irradiation treatment must be conducted in accordance with the other requirements of § 305.34.” We would also add this text to the list of Hawaiian commodities for which irradiation is an approved treatment in our proposed revision of § 318.13–4f.

This change would also allow Hawaiian fruits and vegetables that are otherwise eligible for interstate movement to be irradiated for plant pests at the doses we have proposed to add to the approved irradiation doses for imported fruits and vegetables in § 305.31(a), including the proposed generic minimum dose of 400 gray for arthropod plant pests other than pupae and adults of the order *Lepidoptera*, the proposed generic dose of 150 gray for all fruit flies, the proposed lower doses for certain fruit flies, and the proposed new doses for nine plant pests.

#### *Minimum Dose Reductions for Fruits and Vegetables Moved Interstate From Hawaii*

As previously mentioned, paragraph (a) of § 305.34 lists fruits and vegetables moved interstate from Hawaii for which irradiation is an approved treatment. The pests of concern with regard to the interstate movement of all but two of these fruits and vegetables (the mango and the sweetpotato) are the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly, known collectively as the Trifly complex. To treat the fruits and vegetables affected by the Trifly complex, the regulations presently require a minimum irradiation dose of 250 gray to neutralize these pests.

Research conducted by ARS, as discussed under the heading “Generic Minimum Dose for Fruit Flies and Minimum Dose Reductions for Individual Fruit Fly Species” earlier in this document, has determined that the three fruit flies of concern for these commodities are neutralized at a dose of 150 gray.

Therefore, we are proposing to reduce the minimum required dose of irradiation from 250 gray to 150 gray for the Hawaiian fruits and vegetables affected by the Trifly complex: Abiu, atemoya, bell pepper, carambola, eggplant, litchi, longan, papaya, pineapple (other than smooth Cayenne), rambutan, sapodilla, Italian squash, and tomato. This action would make our minimum dose requirements for irradiation treatment of Hawaiian fruits and vegetables moved interstate consistent with our proposed minimum dose requirements for irradiation treatment of imported fruits and vegetables.

#### *Irradiation Treatment for Fruits and Vegetables Moved Interstate From Puerto Rico and the U.S. Virgin Islands*

The Puerto Rico and U.S. Virgin Islands fruits and vegetables regulations (§§ 318.58 through 318.58–16) prohibit or restrict the interstate movement of

fruits and vegetables from Puerto Rico and the U.S. Virgin Islands to prevent the introduction and dissemination of plant pests into the continental United States. Currently, these regulations do not provide for the use of irradiation as a treatment for fruits and vegetables moved interstate from these locations. We believe that irradiation for fruits and vegetables from Puerto Rico and the U.S. Virgin Islands can serve as an effective alternative treatment to those treatments currently authorized for fruits and vegetables moved interstate from Puerto Rico and the U.S. Virgin Islands in part 305 if those fruits and vegetables are only associated with pests listed in § 305.31(a) as pests for which irradiation is an approved treatment.

Therefore, we are also proposing to amend § 305.34 to provide for the use of irradiation as a treatment for fruits and vegetables moved interstate from Puerto Rico and the U.S. Virgin Islands as well as from Hawaii. The section heading would be amended to read: "Irradiation treatment of certain fruits and vegetables from Hawaii, Puerto Rico, and the U.S. Virgin Islands." We would make similar changes throughout the section. We would retain the information in § 305.34 that is specific to Hawaiian commodities, such as the list of Hawaiian commodities for which irradiation is an approved treatment in proposed § 305.34(a)(1) and the additional requirements for the issuance of a certificate or limited permit for the interstate movement of litchi and sweetpotato from Hawaii in § 305.34(b)(7).

We are also proposing to add a new § 318.58–4b, "Irradiation treatment of fruits and vegetables from Puerto Rico and the U.S. Virgin Islands," to the Puerto Rico and U.S. Virgin Islands fruits and vegetables regulations. Because no commodity-specific irradiation treatment schedules have been developed for fruits and vegetables from Puerto Rico and the U.S. Virgin Islands, this section would read, in its entirety, "Any fruits or vegetables from Puerto Rico or the U.S. Virgin Islands that are required by this subpart to be treated or subjected to inspection to control one or more of the plant pests listed in § 305.31(a) may instead be treated with irradiation. Fruits and vegetables treated with irradiation for plant pests listed in § 305.31(a) of this chapter must be irradiated at the doses listed in § 305.31(a), and the irradiation treatment must be conducted in accordance with the other requirements of § 305.34."

Currently, no irradiation facilities exist in Puerto Rico or the U.S. Virgin

Islands, and PPQ has received no requests to approve the construction of irradiation facilities in either territory. However, these proposed changes to the regulations in § 305.34 would give persons moving fruits or vegetables interstate from Puerto Rico or the U.S. Virgin Islands the option of moving the fruits and vegetables under limited permit to an irradiation facility in the continental United States for treatment before the fruits and vegetables enter interstate commerce. If moved interstate in this manner, fruits and vegetables from Puerto Rico and the U.S. Virgin Islands would be treated for plant pests listed in § 305.31(a) in accordance with the required doses listed there and in accordance with the other requirements in § 305.34.

As with Hawaiian commodities, as long as the only pests for which a commodity is required by the Puerto Rico and U.S. Virgin Islands quarantine regulations to be treated or be subject to a systems approach prior to interstate movement are pests for which irradiation is an approved treatment in § 305.31, then that commodity would be able to be moved interstate after it undergoes irradiation for those pests at the doses listed in § 305.31(a) and in accordance with the other requirements in § 305.34, with no need for additional rulemaking. For commodities that are not currently allowed to be moved interstate under the Puerto Rico and U.S. Virgin Islands territorial quarantine regulations, PPQ would conduct a risk assessment to determine whether irradiation alone or in combination with other phytosanitary measures can treat all the quarantine pests that might be associated with its interstate movement from Puerto Rico and the U.S. Virgin Islands. If it was determined that irradiation would be an effective treatment for these commodities, they would be approved for treatment with irradiation through notice-and-comment rulemaking.

Under this proposed rule, fruits and vegetables from Puerto Rico and the U.S. Virgin Islands that are listed in § 305.31(h)(2)(ii) and associated with pests for which irradiation is an approved treatment would be allowed to be irradiated for plant pests at the doses we have proposed to add to the approved irradiation doses for imported fruits and vegetables in § 305.31(a), including the proposed generic minimum dose of 400 gray for arthropod plant pests other than pupae and adults of the order *Lepidoptera*, the proposed generic dose of 150 gray for all fruit flies, the proposed lower doses for certain fruit flies, and the proposed new doses for nine plant pests.

In addition, to reflect all of the proposed changes to irradiation treatment for fruits and vegetables from foreign localities and from Hawaii, Puerto Rico, and the U.S. Virgin Islands, we would revise paragraph § 305.2(h)(1), which currently lists the plant pests associated with imported fruits and vegetables for which irradiation is an approved treatment, to read: "Treatment of fruits and vegetables from foreign localities by irradiation in accordance with § 305.31 may be substituted for other approved treatments for any of the pests listed in § 305.31(a). Treatment of fruits and vegetables from Hawaii, Puerto Rico, and the U.S. Virgin Islands by irradiation at the minimum doses listed in § 305.31(a) and in accordance with § 305.34 may be substituted for other approved treatments for any of the pests listed in § 305.31(a)."

#### *Irradiation Treatment for Regulated Articles Moved Interstate From Areas Quarantined for Mexican Fruit Fly and Mediterranean Fruit Fly*

The Mexican fruit fly regulations contained in §§ 301.64 through 301.64–10 restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Mexican fruit fly (*Anastrepha ludens*) to noninfested areas of the United States. Similarly, the Mediterranean fruit fly regulations contained in §§ 301.78 through 301.78–10 restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Mediterranean fruit fly (*Ceratitis capitata*) to noninfested areas of the United States.

Within the Mexican fruit fly regulations and the Mediterranean fruit fly regulations, paragraphs §§ 301.64–10(g) and 301.78–10(c), respectively, set out the conditions under which certain regulated articles may be treated with irradiation in order to prevent the spread of those fruit flies via the interstate movement of those regulated articles. We are proposing to remove the bulk of these paragraphs because their provisions are currently duplicated in part 305; § 305.32 duplicates the irradiation provisions relating to the Mexican fruit fly, while § 305.33 duplicates the irradiation provisions relating to the Mediterranean fruit fly. In place of the detailed provisions currently contained in paragraphs §§ 301.64–10(g) and 301.78–10(c), we would indicate that regulated articles may be treated with irradiation in accordance with the provisions of 7 CFR part 305.

In § 305.32, the required dose for Mexican fruit fly is 150 gray; in

§ 305.33, the required dose for Mediterranean fruit fly is 225 gray. Research conducted by ARS, as discussed under the heading "Generic Minimum Dose for Fruit Flies and Minimum Dose Reductions for Individual Fruit Fly Species" earlier in this document, has determined that the Mexican fruit fly is neutralized at a dose of 70 gray, while the Mediterranean fruit fly is part of the family of fruit flies that are neutralized at a dose of 150 gray. Therefore, we are proposing to update the dose requirements for those fruit flies in § 305.31(a).

In order to make the Mexican fruit fly and Mediterranean fruit fly irradiation treatment regulations consistent with the other changes proposed in this document, we are proposing to remove references to specific required doses from §§ 305.32 and 305.33 and instead refer to the doses listed in § 305.31(a). For example, the requirement in paragraph § 305.32(d) that fruits and vegetables treated with irradiation for Mexican fruit fly must receive a minimum absorbed ionizing radiation dose of 150 gray (15 krad) would be replaced with a requirement that such fruits and vegetables must receive the approved dose for Mexican fruit fly listed in § 305.31(a). This change would make the required irradiation doses for regulated articles moved interstate from areas quarantined for Mexican fruit fly and Mediterranean fruit fly consistent with the proposed irradiation doses for those fruit flies with regard to fruits and vegetables that are imported or moved interstate from Hawaii, Puerto Rico, or the U.S. Virgin Islands.

#### *Irradiation and Inspection for Bananas Moved Interstate From Hawaii*

The regulations in § 318.13–4i allow green bananas of the cultivars "Williams," "Valery," "Grand Nain," and standard and dwarf "Brazilian" may be moved interstate from Hawaii under a systems approach. A systems approach is a combination of overlapping phytosanitary measures that provide quarantine security against plant pests.

We are proposing to add two combinations of irradiation and inspection as treatments for bananas from Hawaii. Specifically, bananas, regardless of cultivar or ripeness, from Hawaii would be eligible for interstate movement if they have been inspected in Hawaii for the banana moth, *Opogona sacchari* (Bojen), and have undergone irradiation treatment with a minimum dose of 400 gray at an approved facility. Bananas from Hawaii would also be eligible for interstate movement if they have been inspected

in Hawaii for the banana moth and the green scale, *Coccus viridis* (Green), and have undergone irradiation treatment with a minimum dose of 150 gray at an approved facility. We believe either of these measures, which are discussed in detail in the following paragraphs, would provide the necessary phytosanitary protection to prevent the introduction and dissemination of plant pests into the continental United States.

A 1998 report completed by APHIS on the inspection requirements for green bananas from Hawaii identified five pests of concern that could be spread from Hawaii to the rest of the United States by the interstate movement of bananas. These pests are: The banana moth, the green scale, the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly. Copies of this report may be requested from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Of the five pests identified in the report, we believe the green scale and the banana moth can be detected by visual inspection. The green scale is a surface pest, which means that any infestations of green scale on bananas are readily apparent. Although the banana moth is an internal pest, we believe that it can also be detected by visual inspection; bananas infested with banana moth show numerous external signs of infestation, such as holes in the skin and deformed nipples. For both of these pests, we believe that visual inspection can effectively mitigate the risk of their introduction into other areas in the United States via the interstate movement of bananas from Hawaii.

The Mediterranean fruit fly, the melon fruit fly, and the Oriental fruit fly infest bananas only where injury or some fault has exposed the flesh of the fruit. For the fruit flies, visual inspections would not be an effective means of interception; they must be neutralized by treatment.

As discussed above under the heading "Generic Minimum Dose for Fruit Flies and Minimum Dose Reductions for Individual Fruit Fly Species," ARS research indicates that the fruit flies of concern are neutralized at a dose of 150 gray. As discussed above under the heading "Proposed New Doses for Nine Other Plant Pests," ARS research indicates that the green scale is neutralized at a dose of 400 gray. However, we currently lack information on what irradiation dose would be necessary to neutralize the banana moth.

Therefore, we are proposing to provide two options for the irradiation treatment of bananas from Hawaii: The

bananas could either be irradiated at 150 gray, a dose sufficient to neutralize the fruit flies associated with bananas from Hawaii, and inspected for the green scale and the banana moth, or the bananas could be irradiated at 400 gray, a dose sufficient to neutralize both the fruit flies and the green scale, and inspected for the banana moth.

We expect that the combinations of treatment with irradiation and inspection would be effective alternatives to the current systems approach for green bananas of certain cultivars. Furthermore, treatment with irradiation would allow bananas of any ripeness or cultivar to be moved interstate from Hawaii; the current regulations, as noted above, only allow certain cultivars of green bananas to be moved interstate under the systems approach described in § 318.13–4i.

To accomplish this change, we would amend § 318.13–4i, which currently describes the systems approach under which green bananas of certain cultivars may currently be imported into the United States. Specifically, we would add a new paragraph indicating that bananas from Hawaii would be eligible to move interstate if they were irradiated at the doses listed in § 305.31(a) and in accordance with the other requirements in § 305.34 for the fruit flies and the green scale and inspected for the banana moth or if they were irradiated for the fruit flies and inspected for the green scale and the banana moth. We would amend the section heading of § 318.13–4i to reflect the fact that it would no longer concern only green bananas.

We would also indicate in paragraph § 318.13–4i(b) that, to be eligible for a certificate for interstate movement, the bananas would have to be treated and inspected in Hawaii. (For litchi and sweetpotato, the two commodities for which inspection is required for certification in § 305.34(b)(7)(i), the regulations require that the inspection be conducted before the treatment is performed. Hawaiian producers have requested that we allow the bananas to be inspected after irradiation treatment; therefore, we have proposed to allow inspection to be conducted before or after irradiation treatment. If bananas from Hawaii were inspected for the banana moth after undergoing irradiation treatment in Hawaii and found to be infested with the banana moth or the green scale, the bananas would not be eligible for interstate movement. In such a case, the cost of performing the treatment would be borne by the grower, as it normally is.)

In addition, to be eligible for a limited permit for the interstate movement of

untreated bananas from Hawaii for treatment on the mainland United States, bananas from Hawaii would have to be inspected for the relevant pests in Hawaii.

Finally, we would add a sentence to § 318.13–3(b)(3) indicating that untreated bananas from Hawaii may be moved interstate for irradiation treatment on the mainland United States if the provisions of § 318.13–4i(b) are met and if the bananas are accompanied by a limited permit issued by an inspector in accordance with § 318.13–4(c).

#### *Vapor Heat Treatment for Sweetpotatoes Moved Interstate From Hawaii*

Within part 318, “Subpart—Sweetpotatoes” (§§ 318.30 and 318.30a) quarantines Hawaii, Puerto Rico, and the U.S. Virgin Islands because of the sweetpotato scarabee (*Euscepes postfasciatus* Fairm. [Coleoptera: Cucurionidae], also known as the West Indian sweetpotato weevil) and the sweetpotato stem borer (*Omphisa anastomosalis* Guen. [Lepidoptera: Crambidae], also known as the sweetpotato vine borer) and restricts the interstate movement of sweetpotatoes (*Ipomoea batatas* Poir.) from those places.

Paragraph (c) of § 318.30 allows sweetpotatoes to be moved interstate from Hawaii only if they have been subjected to fumigation with methyl bromide or irradiated in accordance with § 318.13–4f or if they are being moved by the USDA for scientific or experimental purposes. We are proposing to add a vapor heat treatment, combined with tuber cutting and inspection, for sweetpotatoes moved interstate from Hawaii as an alternative to fumigation with methyl bromide and irradiation.

A pest risk assessment completed by APHIS in 2002 and updated in May 2003 identified five pests of concern that could be spread from Hawaii to the rest of the United States by the interstate movement of sweetpotatoes: The two pests already named in the regulations, the sweetpotato scarabee and the sweetpotato stem borer; the gray pineapple mealybug, *Dysmicoccus neobrevipes* (Homoptera: Pseudococcidae); the ginger weevil, *Elytrotreinus subtruncatus* (Coleoptera: Cucurionidae); and the Kona coffee root-knot nematode, *Meloidogyne konaensis* (Tylenchida: Heteroderidae). Copies of this risk assessment may be requested from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Two of these pests, the gray pineapple mealybug and the Kona coffee root-knot

nematode, are external pests. We believe they can be effectively detected by visual inspection, and we would require such visual inspection as a condition of the interstate movement of sweetpotato from Hawaii. This is consistent with the recommendations of the pest risk assessment.

The other three pests, the ginger weevil, the sweetpotato scarabee, and the sweetpotato stem borer, are internal pests, meaning that visual inspection would not be an effective means to intercept them; thus, they must be neutralized by treatment. We believe that the vapor heat treatment we are proposing to allow, combined with the tuber cutting and visual inspection that we would require, would be an effective alternative to the methyl bromide and irradiation treatments currently prescribed by the regulations to control these pests.

The vapor heat treatment would be required to be performed according to the following schedule:

- Temperature probes would have to be placed in the approximate centers of individual sweetpotato roots.
- The air surrounding the sweetpotato roots would have to be heated. After the temperature of the air surrounding the sweetpotato roots reaches 87.8 °F (31 °C), its temperature would have to be incrementally raised from 87.8 °F (31 °C) to 111.2 °F (44 °C) over a period of 240 minutes.
- Using saturated water vapor at 118.4 °F (48 °C), the core temperature of the individual sweetpotato roots would then have to be raised to 116.6 °F (47 °C).
- After the core temperature of the sweetpotato roots reaches 116.6 °F (47 °C), the core temperature would have to be held at 116.6 °F (47 °C) or higher for 190 minutes.

This vapor heat treatment was developed in Japan to treat sweetpotatoes moved from Okinawa to mainland Japan for the West Indian sweetpotato weevil, the sweetpotato vine borer, and the sweetpotato weevil (*Cylas formicarius elegantulus*). A review by ARS has confirmed that this treatment is effective at neutralizing the West Indian sweetpotato weevil and the sweetpotato vine borer.

There is no research available at this time on the use of this vapor heat treatment to neutralize the ginger weevil, which was named as a pest of concern in APHIS' pest risk assessment. Although the sweetpotato is not a known host of the ginger weevil, it may move with sweetpotatoes as a hitchhiker. However, vapor heat treatment has been used effectively in Japan against other weevils, such as the

sweetpotato weevil mentioned above. Additionally, no live pests have ever been found in sweetpotatoes treated according to this vapor heat treatment schedule. For these reasons, we believe that this vapor heat treatment would be effective against the ginger weevil. However, as an additional phytosanitary precaution, we are proposing to require that sweetpotatoes treated according to this vapor heat treatment schedule be sampled, cut, and inspected and found to be free of the ginger weevil before the sweetpotatoes would be allowed to move from the treatment facility to their destination. The sampling, cutting, and inspection for the ginger weevil would not have to be performed at the same time as the inspection for the gray pineapple mealybug and the Kona coffee root-knot nematode, although both inspections would be required to be conducted prior to treatment. However, the sampling, cutting, and inspection for ginger weevil would have to be performed under conditions that would prevent any pests that may emerge from the sampled sweetpotatoes from infesting any other sweetpotatoes intended for interstate movement in accordance with these proposed requirements.

Sweetpotatoes treated according to these requirements would also have to be packaged according to certain requirements including fruit fly-proof cartons, wrapping of entire pallet loads, and identification requirements. Untreated sweetpotatoes moved interstate to the mainland United States for treatment would be required to be shipped in sealed shipping containers. These proposed requirements would ensure that quarantine pests would be prevented from infesting shipments of treated sweetpotatoes and that any quarantine pests that may be present in untreated sweetpotatoes do not enter the environment. The proposed requirements are identical to the packaging requirements in § 305.34 for sweetpotatoes treated using irradiation and moved interstate from Hawaii.

We would allow this treatment to be administered either in Hawaii or at an approved treatment facility in the mainland United States. If the sweetpotatoes were treated in Hawaii, they would move from Hawaii under a certificate for interstate movement; if they were treated in the mainland United States, they would move from Hawaii under limited permit, and they would have to be inspected for the gray pineapple mealybug and the Kona coffee root-knot nematode and sampled, cut, and inspected for ginger weevil prior to interstate movement from Hawaii.



To accomplish this change, we would add a new paragraph (k) to the vapor heat treatment regulations in § 305.24 that would set out the vapor heat treatment schedule for sweetpotatoes moved interstate from Hawaii. We would also add a new section § 318.13–4d to the Hawaiian quarantine regulations to set out the additional conditions that must be fulfilled in order to allow the interstate movement of sweetpotatoes from Hawaii that are treated in accordance with proposed § 305.24(k). Finally, we would add a new paragraph (b)(4) to § 318.13–3, which currently sets out conditions of movement for regulated articles moved interstate from Hawaii, that would indicate that sweetpotatoes could be moved under a limited permit for treatment at an approved treatment facility in the continental United States if they have been prepared in accordance with the conditions of the Hawaiian quarantine regulations.

*Removal of the Subpart for Sweetpotatoes and Dispersal of Its Provisions*

As mentioned earlier in this document, within part 318, “Subpart—Sweetpotatoes” (§§ 318.30 and 318.30a) quarantines Hawaii, Puerto Rico, and the U.S. Virgin Islands because of the sweetpotato scarabee and the sweetpotato stem borer and restricts the interstate movement of sweetpotatoes from those places.

Section 318.30 prohibits the interstate movement of sweetpotatoes from Hawaii unless the sweetpotatoes are fumigated with methyl bromide or irradiated and prohibits the interstate movement of sweetpotatoes from Puerto Rico and the U.S. Virgin Islands unless they are fumigated with methyl bromide. Section 318.30a sets out a systems approach using inspection, washing, grading, and application of insecticide under which sweetpotatoes may be moved interstate from Puerto Rico to certain locations in the mainland United States.

With the exception of sweetpotatoes, cotton, cottonseed, and cottonseed products, and soil, the regulations in part 318 are organized first by locality and then by commodity; e.g., if a person wishes to move tomatoes interstate from Puerto Rico, that person would look in the Puerto Rico and U.S. Virgin Islands quarantine regulations to determine whether tomatoes from Puerto Rico could be moved interstate and, if so, under what conditions they would be allowed to move. We believe that this organization reflects how regulated parties use the Code of Federal Regulations, as persons who wish to

move a commodity interstate typically are seeking to move that commodity interstate from a specific location. Therefore, we are proposing to remove “Subpart—Sweetpotatoes” from part 318 and to disperse its provisions to the Hawaiian quarantine regulations and the Puerto Rico and U.S. Virgin Islands quarantine regulations.

Because the sweetpotatoes subpart has set out restrictions on the interstate movement of sweetpotatoes from Hawaii and from Puerto Rico and the U.S. Virgin Islands, sweetpotatoes are not listed as regulated articles in either the list of regulated articles from Hawaii in § 318.13–2(b) or the list of regulated articles from Puerto Rico and the U.S. Virgin Islands in § 318.58–2(b). Accordingly, we would add an entry for sweetpotatoes to each of those lists.

In the Hawaiian quarantine regulations, § 318.13–4b authorizes the interstate movement of any fruit listed in paragraph (b) of that section if that fruit is inspected by an inspector and treated for fruit flies in accordance with 7 CFR part 305. The treatment requirements and schedule for fumigating sweetpotatoes with methyl bromide are found in 7 CFR part 305. Accordingly, we are proposing to amend the references to “eligible fruits” in that paragraph to read “eligible fruits and vegetables,” to amend the reference to “fruit flies” to read “plant pests,” and to add sweetpotatoes to the list of commodities authorized to move interstate in that paragraph. The other treatment available for Hawaiian sweetpotatoes, irradiation, is already authorized in the Hawaiian quarantine regulations at § 318.13–4f. (As described earlier in this document, we are proposing to replace the requirements currently in § 318.13–4f with a list of Hawaiian commodities for which irradiation is an approved treatment. In addition, we are proposing to add a new treatment schedule and a new section § 318.13–4d to authorize vapor heat treatment as a treatment for sweetpotatoes moved interstate from Hawaii. Neither of these changes would be complicated by our removal of the sweetpotatoes subpart.)

In the Puerto Rico and U.S. Virgin Islands quarantine regulations, § 318.58–4 allows an inspector to issue a certificate for interstate movement for regulated fruits and vegetables after undergoing an approved treatment from 7 CFR part 305 and if the articles are handled after treatment in accordance with all conditions that the inspector requires. Since fumigation with methyl bromide is already listed in 7 CFR part 305 as an approved treatment for sweetpotatoes from Puerto Rico and the

U.S. Virgin Islands and the schedule and conditions of the treatment are also already set out in 7 CFR part 305, there is no need to modify the Puerto Rico and U.S. Virgin Islands quarantine regulations to accommodate the removal of § 318.30.

However, § 318.30a, as discussed above, sets out a systems approach using inspection, washing and grading, and application of insecticide under which sweetpotatoes may be moved interstate from Puerto Rico. To preserve this option for persons who wish to move sweetpotatoes interstate from Puerto Rico, we would establish a new section § 318.58–4c with the same requirements as § 318.30a. In transferring this section to the Puerto Rico and U.S. Virgin Islands quarantine regulations, however, we would update the language in § 318.30a and reorganize some of its requirements to make it easier to understand.

We would also make several other editorial changes in the Hawaiian quarantine regulations and the Puerto Rico and U.S. Virgin Islands quarantine regulations to reflect the removal of the sweetpotatoes subpart.

*Definition of Inspector*

We are also proposing to amend the definitions of *inspector* in the Hawaiian quarantine regulations and the Puerto Rico and U.S. Virgin Islands quarantine regulations to reflect the fact that some inspection responsibilities have been transferred to the Department of Homeland Security’s Bureau of Customs and Border Protection.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This proposed rule would make several amendments to the current provisions for the use of irradiation as a treatment for various plant pests, allow the use of irradiation and inspection as a treatment for bananas moved interstate from Hawaii as an alternative to the systems approach currently described in the regulations, and allow the use of a vapor heat treatment for sweetpotatoes moved interstate from Hawaii as an alternative to fumigation with methyl bromide and irradiation. The potential economic impacts of the proposed changes are discussed below.



### **Irradiation Treatment for Fruits and Vegetables**

The regulations in § 305.31 set out standards, minimum doses, and other requirements for performing irradiation treatments on imported fruits and vegetables and set out minimum doses necessary to neutralize 11 fruit flies and the mango seed weevil. This proposed rule would add minimum doses for more pests and lower the minimum doses for others. Specifically, this proposal would establish:

- A minimum generic dose of 400 Gy for all arthropod plant pests other than pupae and adults of the order *Lepidoptera*;
- A minimum generic dose of 150 Gy for all fruit flies of the family *Tephritidae*;
- Lower minimum doses for certain fruit flies; and
- New approved minimum doses for nine plant pests.

This proposed rule would also allow irradiation to serve as an alternative to other approved treatments for additional fruits and vegetables moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands. Fruits and vegetables from Hawaii, Puerto Rico, and the U.S. Virgin Islands that are required to be treated by other means for pests listed in § 305.31(a) prior to interstate movement would be allowed to be moved interstate if they are treated with irradiation at the doses listed in § 305.31(a) and in accordance with the other conditions specified in § 305.34.

At present, § 305.34 only provides for irradiation treatment of fruits and vegetables from Hawaii; however, we have determined that irradiation treatment can be used effectively for commodities from Puerto Rico and the U.S. Virgin Islands if the safeguards in § 305.34 are implemented. Currently, no irradiation facilities exist in Puerto Rico and the U.S. Virgin Islands, and no requests have been received to approve the construction of such facilities. However, the proposed rule would provide for the option of moving the commodities under limited permit to an irradiation facility on the U.S. mainland for treatment prior to entering interstate commerce.

#### *Impact on Small Entities of Proposed Changes in Irradiation Treatment of Fruits and Vegetables*

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their regulations on small entities. The Small Business Administration (SBA) has established size criteria using the North American Industry Classification

System (NAICS) to determine which economic entities meet the definition of a small firm.

Irradiation facilities affected by the proposed rule change would belong to one of the following two NAICS categories: (1) Firms providing irradiation services for the treatment of fruits and vegetables, which would fall within NAICS category 115114, "Postharvest Crop Activities (except Cotton Ginning)"; or (2) firms providing irradiation services for decontamination or sterilization purposes, which would fall within NAICS category 811219, which includes "Medical and surgical equipment repair and maintenance services."

Most treatments of Hawaiian produce are likely to occur at an existing irradiation facility on the island of Hawaii. This facility is used to treat other fruits and vegetables for which irradiation is an approved treatment and can be classified under NAICS category 115114, "Postharvest Crop Activities (except Cotton Ginning)." The SBA criteria classify this facility as a small entity, since its annual sales are less than \$6 million.

Another firm on the U.S. mainland operates two facilities in Illinois and one facility in New Jersey. Its primary service is to provide irradiation treatment for the sanitation of medical devices on contract. This firm is classified within NAICS category 811219, which includes "Medical and surgical equipment repair and maintenance services." However, since it is part of a larger corporation for which annual receipts may exceed \$6 million, this firm is not classified as a small entity under the SBA criteria. Thus, at least one firm that could be affected by the proposed changes is a small entity.

However, irradiation facilities, whether large or small, would benefit from the proposed changes. The range of commodities imported and moved interstate for which irradiation would be an approved treatment would increase. At the same time, dosage levels, and therefore operating costs, would decrease for many commodities. The proposed changes to irradiation doses and proposed provisions allowing the use of pest-specific doses to treat commodities for interstate movement would facilitate the importation of fruits and vegetables and their interstate movement from Hawaii, Puerto Rico, and the U.S. Virgin Islands. For certain pests for which irradiation is already an approved treatment, required irradiation dosages would be lowered to the minimum level necessary. In other instances, irradiation would be newly

allowed as an alternative phytosanitary treatment.

The proposed changes would result in lower costs and increased flexibility for importers, gains that could be expected to be at least partly realized by U.S. consumers through lower prices, assuming competitive markets. For some commodities, irradiation may also provide quality advantages over other treatment methods in terms of increased shelf life. Choice of irradiation as a treatment alternative would rest upon its expected net returns relative to other treatment methods.

Because these proposed changes would have the potential to affect the importation or interstate movement of a wide range of commodities, it is difficult to predict exactly what economic effects the proposed changes would have. APHIS welcomes public comment on the possible impacts of these proposed changes. However, while affected irradiation firms, large and small, would be expected to benefit, we do not expect the impacts to be significant.

### **Irradiation and Inspection for Bananas Moved Interstate From Hawaii**

The regulations in § 318.13–4i currently provide that green bananas (*Musa* spp.) of the cultivars "Williams", "Valery", "Grand Nain", and standard dwarf "Brazilian" may be moved interstate from Hawaii under a systems approach. At this time, only green bananas of these specified cultivars may be moved.

We are proposing to add two combinations of irradiation and inspection as treatments for bananas from Hawaii. Specifically, bananas, regardless of cultivar or ripeness, from Hawaii would be eligible for interstate movement if they have been inspected in Hawaii for the banana moth, *Opogona sacchari* (Bojen), and have undergone irradiation treatment with a minimum dose of 400 gray at an approved facility. Bananas from Hawaii would also be eligible for interstate movement if they have been inspected in Hawaii for the banana moth and the green scale, *Coccus viridis* (Green), and have undergone irradiation treatment with a minimum dose of 150 gray at an approved facility.

#### *Cost of Irradiation Treatment*

The cost of irradiation is estimated at 15 cents per pound.<sup>3</sup> We expect that most bananas moved interstate from Hawaii under this proposed approach would be treated at the existing commercial irradiation facility on the

<sup>3</sup> Source: Hawaii Department of Agriculture.

island of Hawaii. However, the proposed treatment could be performed at the irradiation facilities on the mainland United States as well.

#### *Cost of APHIS Inspection*

Monitoring of quarantine treatments conducted during standard business hours (weekdays between 8 a.m. and 4:30 p.m.) on the island of Hawaii comes at no cost to the facility. APHIS charges for the monitoring of treatments conducted before 8 a.m. and after 4:30 p.m. and on weekends at a time-and-a-half rate.

#### *Benefits*

The proposed combination of irradiation treatment and inspection would offer an alternative to the current systems approach for green fruit of the specified four banana cultivars, and would allow fruit of any ripeness or cultivar to be moved interstate from Hawaii. The approach described in this proposal can be used to mitigate the pest risk associated with all Hawaiian bananas, regardless of cultivar or ripeness. This would allow banana producers and parties moving bananas interstate greater flexibility in operations, more choices with regard to the types of bananas moved interstate, a greater volume of bananas to ship, and less risk of facing rejections during inspection under the current systems approach and Banana Compliance Agreement.

Growers have been reluctant to ship bananas to U.S. mainland markets under

the current regulations because § 318.13–4i(c) of the regulations requires that bananas to be moved interstate be inspected by an inspector and found free of the following defects: Prematurely ripe fingers, fused fingers, or exposed flesh (not including fresh cuts made during the packing process). Bananas moved interstate from Hawaii under this systems approach are required to be free of these defects because they are conducive to fruit fly infestation. However, growers are concerned about the risk of having whole shipments of fruit prohibited from interstate movement as a result of a single fault detected when bananas in a random selection of boxes are inspected. No commercial container shipments of bananas have been made to U.S. mainland markets under the current regulations. Since the combinations of irradiation and inspection that would be required by this proposed rule are sufficient to neutralize fruit flies and other pests of concern, the combination of irradiation and inspection described in this proposed rule would provide the Hawaiian banana industry with an alternative treatment for interstate movement and could open new trade opportunities.

U.S. consumers would benefit from an increased supply of bananas. Growers in Hawaii believe that the U.S. mainland demand for bananas from Hawaii may be equivalent to (if not higher than) the existing demand for Hawaiian papaya.

Hawaiian growers moved approximately 12 million pounds of papayas to U.S. mainland markets in 2003.<sup>4</sup> Demand may be especially high for the apple banana variety, which has a higher sugar content and more aromatic flavor than the standard commercial banana varieties currently available in U.S. mainland markets. Consumers would benefit from the availability of this specialty product.

Hawaii accounts for almost all U.S. banana production.<sup>5</sup> In 2002, there were 677 banana farms in Hawaii,<sup>6</sup> and the value of sales amounted to \$ 8.6 million.<sup>7</sup> Table 1 summarizes production information for bananas and papayas in Hawaii. The utilized production of bananas amounted to 19.5 million pounds in 2002.

The U.S. imported 7,883 million pounds (3,576 million kg) of fresh bananas in 2003, valued at \$959 million.<sup>8</sup> Ecuador, Costa Rica, Guatemala, Colombia, and Honduras accounted for 97 percent of the quantity of imports (table 2). Compared to the 7,883 million pounds of bananas currently imported, Hawaii's total production of 20 million pounds is extremely small, and it is not likely that 100 percent of the State's production would be moved to the mainland United States. Thus, as long as phytosanitary mitigation by means of the approved treatments is maintained, the interstate movement of bananas from Hawaii is unlikely to significantly affect current U.S. trade in fresh bananas.

TABLE 1.—PRODUCTION STATISTICS FOR BANANAS AND PAPAYAS IN HAWAII (2002)

Item	Bananas	Papayas
Bearing acreage (acres) .....	1,300	1,720
Utilized production (1,000 pounds) .....	19,500	45,900
Price (per pound) .....	\$0.430	\$0.260
Value of utilized production .....	<sup>1</sup> \$8.385	<sup>1</sup> \$11.924
Movement to mainland U.S. markets (1,000 pounds) .....	(2)	12,000

Sources: Hawaii Department of Agriculture (movement statistics) and National Agricultural Statistics Service.

<sup>1</sup> In millions.

<sup>2</sup> None.

TABLE 2.—QUANTITY AND VALUE OF FRESH BANANAS IMPORTED INTO THE UNITED STATES FROM THE FIVE MAJOR EXPORTING COUNTRIES (2003)

Country	Quantity (million kg)	Value (million U.S. dollars)
Ecuador .....	902	237.8
Costa Rica .....	901	247.5
Guatemala .....	868	229.1
Colombia .....	429	117.7

<sup>4</sup> Source: Hawaii Department of Agriculture.

<sup>5</sup> The Census of Agriculture (2002) reports minimal acreage in California, Florida, and Texas, which together account for only 131 acres.

<sup>6</sup> National Agricultural Statistics Service, 2002 Census of Agriculture.

<sup>7</sup> From <http://www.nass.usda.gov/hi/fruit/annban.htm>. Sales of Hawaiian bananas in 2003 were valued at \$9.225 million.

<sup>8</sup> World Trade Atlas, 2003.

TABLE 2.—QUANTITY AND VALUE OF FRESH BANANAS IMPORTED INTO THE UNITED STATES FROM THE FIVE MAJOR EXPORTING COUNTRIES (2003)—Continued

Country	Quantity (million kg)	Value (million U.S. dollars)
Honduras .....	388	100.4
Total imports .....	3,576	959.3

Source: World Trade Atlas (2003).

#### *Impact on Small Entities of Proposed Irradiation and Inspection for Bananas Moved Interstate From Hawaii*

Most treatments of Hawaiian bananas are likely to occur at the existing irradiation facility on the island of Hawaii, which, as noted previously, is considered a small entity.

Banana farming is classified under NAICS category 111339 as "Other Noncitrus Fruit Farming." The SBA considers entities in this category to be small if their average annual receipts are less than \$750,000. The 677 banana farms in Hawaii accounted for annual sales of \$8.6 million in total in 2002. Therefore, it is likely that most Hawaiian banana farms would be classified as small entities under the SBA criteria. The treatment monitoring program will be mainly operated by APHIS personnel, and no impact is anticipated on other small entities and government agencies.

#### *Vapor Heat Treatment for Sweetpotatoes Moved Interstate From Hawaii*

We are proposing to allow vapor heat treatment, combined with tuber cutting and visual inspection, to be used as a treatment for sweetpotatoes moved interstate from Hawaii. We believe this treatment would be an effective alternative to the methyl bromide and irradiation treatments currently prescribed by the regulations to control pests of concern.

#### *Cost of Vapor Heat Treatment*

Hawaii has three packing plants on the Island of Hawaii that provide vapor heat treatment services. No other vapor heat treatment plants are currently in operation elsewhere in the State. Since APHIS has yet to certify a facility for the treatment of sweetpotato by vapor heat, the costs of treating this crop specifically cannot be determined with certainty at this time. However, one of the packinghouses estimated that vapor heat treatment costs could amount to 2 to 3 cents per pound for the required treatment protocol. This estimate considered the costs of labor, electricity, water, and sewer service. APHIS has

traditionally certified vapor heat treatment chambers (for example, for papaya) in the "fully loaded configuration." The costs of treating sweetpotato in smaller batch loads still have to be determined. This estimate of treatment cost also does not include a mark-up for the facility. The mark-up will be determined by the number of plants providing service and the demand for service.

#### *Cost of APHIS Inspection for Vapor Heat Treatment or Irradiation*

Monitoring of quarantine treatments conducted during standard business hours (weekdays between 8 a.m. and 4:30 p.m.) on the island of Hawaii comes at no cost to the facility. APHIS charges for the monitoring of treatments conducted before 8 a.m. and after 4:30 p.m. and on weekends at a time-and-a-half rate.

#### *Comparison of Vapor Heat Treatment, Irradiation, and Methyl Bromide*

Vapor heat treatment would provide the Hawaiian sweetpotato industry with an alternative treatment to irradiation or methyl bromide fumigation. If vapor heat treatment could be performed at 2 to 3 cents per pound, it would constitute the most cost-effective treatment, compared to irradiation at 15 cents per pound and fumigation costs ranging from 40.6 cents per pound for 1 pallet to 6.7 cents per pound for 12 pallets (table 3). (These are treatment costs only and do not include the costs of APHIS monitoring or inspection activities or inter-island transportation costs necessary to perform treatments.)

TABLE 3.—ESTIMATED PER-UNIT COST OF VAPOR HEAT TREATMENT, IRRADIATION, AND METHYL BROMIDE FUMIGATION

Treatment	Per unit cost (cents per pound)
Vapor heat treatment .....	2-3
Irradiation .....	15
Methyl bromide fumigation: <sup>1</sup>	
One pallet .....	40.6
Two pallets .....	20.3

TABLE 3.—ESTIMATED PER-UNIT COST OF VAPOR HEAT TREATMENT, IRRADIATION, AND METHYL BROMIDE FUMIGATION—Continued

Treatment	Per unit cost (cents per pound)
Three pallets .....	13.5
Four pallets .....	10.1
Five pallets .....	8.1
Six pallets .....	6.7
Nine pallets .....	7.6
Twelve pallets .....	6.9

<sup>1</sup> One pallet contains 1,500 pounds of sweetpotatoes.

Sources: Packinghouse estimate (vapor heat treatment); Hawaii Department of Agriculture (irradiation and methyl bromide fumigation).

The availability of vapor heat treatment thus provides the Hawaiian sweetpotato industry with an alternative treatment option at a competitive cost. Furthermore, the vapor heat treatment plants in Hawaii will benefit if sweetpotatoes are included in the list of agricultural products to be treated.

#### *Impact of the Proposal on U.S. Sweetpotato Production*

Commercial sweetpotato production in Hawaii occurs on the islands of Hawaii, Kauai, Maui, and Oahu. In 2002, there were 59 sweetpotato farms,<sup>9</sup> and the value of sales was \$989,000.<sup>10</sup> The utilized production of sweetpotatoes in Hawaii was 1.8 million pounds in 2001 (table 4). The crop is in year-round production in Hawaii.

TABLE 4.—PRODUCTION STATISTICS FOR HAWAIIAN SWEETPOTATOES (2001)

Item	Amount
Harvested acres .....	220
Yield per acre (1,000 pounds) .....	8.2
Production (1,000 pounds) .....	1,800

<sup>9</sup> National Agricultural Statistics Service, 2002 Census of Agriculture.

<sup>10</sup> From <http://www.nass.usda.gov/hi/vegetble/annveg.htm>.

TABLE 4.—PRODUCTION STATISTICS FOR HAWAIIAN SWEETPOTATOES (2001)—Continued

Item	Amount
Farm price (cents per pound) <sup>1</sup> ....	50

<sup>1</sup> The 2001 farm price for sweetpotato was 47.3 cents per pound in Hawaii, Honolulu, and the Kauai Counties, and 60 cents per pound in the Maui County (Hawaiian Department of Agriculture).

Source: Hawaii Agricultural Statistics Service.

In the mainland United States, sweetpotato is grown commercially in Alabama, California, Georgia, Louisiana, Mississippi, New Jersey, North Carolina, South Carolina, Texas, and Virginia. North Carolina, Louisiana, Mississippi, and California account for the major proportion of production area by State (table 5). In total, the United States produced 1,355 million pounds of sweetpotatoes from 93,500 acres in 2003 (table 6). The Hawaiian sweetpotato production of 1.8 million pounds thus comprises a minor proportion of the total production of 1,355 million pounds in the United States.

TABLE 5.—ACRES OF SWEETPOTATOES PLANTED IN THE UNITED STATES (2003)

State	Acres planted
North Carolina .....	42,000
Louisiana .....	18,000
Mississippi .....	14,000
California .....	10,100
Texas .....	3,400
Alabama .....	2,900
Others <sup>1</sup> .....	3,100
Total .....	93,500

<sup>1</sup> Including Hawaii.

Source: Economic Research Service, USDA.

TABLE 6.—PRODUCTION AND UTILIZATION STATISTICS FOR SWEETPOTATOES IN THE UNITED STATES (2003) <sup>1</sup>

Item	Amount
Acres planted .....	93,500
Three-year average yield (cwt/acre) .....	150
Production (million pounds) .....	1,355
Imports (million pounds) .....	17.0
Exports (million pounds) .....	53.0
Total utilization (million pounds) <sup>2</sup> .....	1,148.3
Per capita use (pounds) .....	3.9
Three-year average per capita use (pounds) .....	4.0
Current dollars (\$/cwt) .....	15.75

TABLE 6.—PRODUCTION AND UTILIZATION STATISTICS FOR SWEETPOTATOES IN THE UNITED STATES (2003) <sup>1</sup>—Continued

Item	Amount
Constant 1996 dollars (\$/cwt) ....	13.91

<sup>1</sup> Estimates are for the total United States, and therefore include Hawaii. Forecasted estimates are shown.

<sup>2</sup> Total utilization includes 103 million pounds used for seed and 67.8 million pounds accruing to feed use, shrink, and loss.

Source: Economic Research Service, United States Department of Agriculture. Acres were obtained from Lucier, G. "Sweet potatoes—getting to the root of demand." Economic Research Service, USDA, 2002.

The Hawaiian sweetpotatoes intended for the U.S. mainland markets are of a special purple flesh variety, and they are therefore shipped to the mainland as a specialty product intended for niche markets. U.S. mainland consumers could, therefore, benefit from an increased supply of these specialty sweetpotatoes.

Interstate movement provides Hawaiian growers and shippers with increased marketing opportunities. Sweetpotatoes are in year-round production in Hawaii, but some seasonal variation in volume is expected. Out-shipment to U.S. mainland markets is estimated at 50,000 to 60,000 pounds per week. New plantings of the crop have increased on the island of Hawaii since irradiation was approved as an alternative to methyl bromide fumigation in June 2003. However, plantings are likely to increase each year if the market demand increases for Hawaiian sweetpotatoes regardless of whether the product is treated by methyl bromide fumigation, irradiation, or vapor heat treatment. Nevertheless, even if sweetpotato production increases in Hawaii, the relative volume of production (1.8 million pounds) remains extremely small in comparison to the volume of U.S. mainland sweetpotato production (1.36 billion pounds).

Thus, since Hawaiian production is so small in comparison to U.S. mainland production, and as long as phytosanitary mitigation by the approved treatments is maintained, sweetpotato shipments from Hawaii are unlikely to affect mainland producers. Consumers would benefit from the availability of the purple-fleshed specialty sweetpotato product, and the Hawaiian sweetpotato industry would gain opportunities to expand its mainland U.S. markets.

### *Impact on Small Entities of Proposed Vapor Heat Treatment of Sweetpotatoes Moved Interstate From Hawaii*

The availability of vapor heat treatment at a competitive cost could divert some sweetpotatoes moved interstate from Hawaii from the existing irradiation facility in Hawaii to a vapor heat treatment facility. This would impact the existing irradiation facility in Hawaii, which is a small entity. However, it is not known at this time what proportion of Hawaiian sweetpotatoes moved interstate would be treated with vapor heat instead of irradiation if this proposal becomes effective.

On the other hand, vapor heat treatment facilities could benefit if vapor heat is approved as a treatment for sweetpotatoes moved interstate from Hawaii. However, since facilities for the vapor heat treatment of Hawaiian sweetpotatoes have not been certified yet, the businesses cannot be conclusively categorized into small or large entities at this time.

Sweetpotato farming is classified under NAICS category 111219, "Other Vegetables (except Potato and Melon Farming." According to the SBA's criteria, an entity involved in crop production is considered small if it has average annual receipts of less than \$750,000. The 59 sweetpotato farms in Hawaii accounted for annual sales of \$989,000 in total in 2002. Therefore, it is likely that most of these farms would be considered small entities according to the SBA criteria. The monitoring and inspection program will be mainly operated by APHIS personnel, and no impact is anticipated on other small entities and government agencies.

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

### **Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this

rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 03-077-1. Please send a copy of your comments to: (1) Docket No. 03-077-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would revise the approved doses for irradiation treatment of imported fruits and vegetables by establishing a new minimum generic dose of irradiation for most arthropod plant pests, establishing a new minimum generic dose for the fruit fly family, reduce the minimum dose of irradiation for some specific fruit fly species, and adding nine pests to the list of pests for which irradiation is an approved treatment. Furthermore, we are proposing to provide for the irradiation of fruits and vegetables moved interstate from Hawaii at the pest-specific irradiation doses that are now approved for imported fruits and vegetables. We are also proposing to provide for the use of irradiation to treat fruits and vegetables moved interstate from Puerto Rico and the U.S. Virgin Islands. Finally, we are proposing to add irradiation as a treatment for bananas from Hawaii and to add vapor-heat treatment as an optional treatment for sweetpotatoes from Hawaii.

These changes would necessitate the use of certain information collection activities, including the completion of certificates and limited permits for interstate movement of fruits and vegetables and the completion of phytosanitary certificates for imported fruits and vegetables.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping

requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.2487 hours per response.

*Respondents:* Importers and exporters of fruits and vegetables, irradiation facility personnel, shippers, and State plant regulatory officials.

*Estimated annual number of respondents:* 17.

*Estimated annual number of responses per respondent:* 60.2941.

*Estimated annual number of responses:* 1,025.

*Estimated total annual burden on respondents:* 255 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### List of Subjects

##### 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine,

Reporting and recordkeeping requirements, Transportation.

##### 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

##### 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

##### 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR parts 301, 305, 318, and 319 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

**Authority:** 7 U.S.C. 7701-7772; 7 CFR 2.22, 2.80, and 371.3.

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

2. In § 301.64-10, paragraph (g) would be revised to read as follows:

##### § 301.64-10 Treatments.

\* \* \* \* \*

(g) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of part 305 of this chapter, is approved as a treatment for any fruit listed as a regulated article in § 301.64-2(a).

3. In § 301.78-10, paragraph (c) would be revised to read as follows:

##### § 301.78-10 Treatments.

\* \* \* \* \*

(c) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of part 305 of this chapter, is approved as a treatment for any berry, fruit, nut, or vegetable listed as a regulated article in § 301.78-2(a) of this subpart.

\* \* \* \* \*

#### PART 305—PHYTOSANITARY TREATMENTS

4. The authority citation for part 305 would continue to read as follows:

**Authority:** 7 U.S.C. 7701-7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

5. Section 305.2 would be amended as follows:

a. By revising paragraph (h)(1) to read as set forth below.

b. In the table in paragraph (h)(2)(ii), under Hawaii, by adding a new entry, in alphabetical order, for “banana” to read as set forth below.

c. In the table in paragraph (h)(2)(ii), under Hawaii, by revising the entry for “sweetpotato” to read as set forth below.

#### § 305.2 Approved treatments.

\* \* \* \* \*

(h) *Fruits and vegetables.* (1) Treatment of fruits and vegetables from foreign localities by irradiation in accordance with § 305.31 may be substituted for other approved treatments for any of the pests listed in § 305.31(a). Treatment of fruits and vegetables from Hawaii, Puerto Rico,

and the U.S. Virgin Islands by irradiation at the minimum doses listed in § 305.31(a) and in accordance with § 305.34 may be substituted for other approved treatments for any of the pests listed in § 305.31(a).

(2) \* \* \*

(ii) \* \* \*

Location	Commodity	Pest	Treatment schedule
Hawaii			
	Banana .....	<i>Bactrocera curcurbitae</i> , <i>Bactrocera dorsalis</i> , <i>Ceratitis capitata</i> , <i>Coccus viridis</i> .	IR.
	Sweetpotato .....	<i>Euscepes postfasciatus</i> , <i>Omphisa anastomosalis</i> , <i>Elytrotreinus subtruncatus</i> .	MB T101–b–3–1 or § 305.24(k) or IR.

\* \* \* \* \*

6. In § 305.24, a new paragraph (k) would be added to read as set forth below.

#### § 305.24 Vapor heat treatment schedules.

\* \* \* \* \*

(k) *Vapor heat treatment for sweetpotatoes moved interstate from Hawaii.* (1) Temperature probes must be placed in the approximate center of individual sweetpotato roots.

(2) The air surrounding the sweetpotato roots must be heated. After

the temperature of the air surrounding the sweetpotato roots reaches 87.8 °F (31 °C), its temperature must be incrementally raised from 87.8 °F (31 °C) to 111.2 °F (44 °C) over a period of 240 minutes.

(3) Using saturated water vapor at 118.4 °F (48 °C), the core temperature of the individual sweetpotato roots must be raised to 116.6 °F (47 °C).

(4) After the core temperature of the sweetpotato roots reaches 116.6 °F (47 °C), the core temperature must then be

held at 116.6 °F (47 °C) or higher for 190 minutes.

7. In § 305.31, the section heading and paragraph (a), including the table, would be revised to read as follows:

#### § 305.31 Irradiation treatment of imported fruits and vegetables for certain plant pests.

(a) *Approved doses.* Irradiation at the following doses for the specified plant pests, carried out in accordance with the provisions of this section, is approved as a treatment for all fruits and vegetables:

#### IRRADIATION FOR CERTAIN PLANT PESTS IN IMPORTED FRUITS AND VEGETABLES

Scientific name	Common name	Dose (gray)
<i>Anastrepha ludens</i> .....	Mexican fruit fly .....	70
<i>Anastrepha obliqua</i> .....	West Indian fruit fly .....	100
<i>Anastrepha serpentina</i> .....	Sapote fruit fly .....	100
<i>Anastrepha suspensa</i> .....	Caribbean fruit fly .....	70
<i>Bactrocera jarvisi</i> .....	Jarvis fruit fly .....	100
<i>Bactrocera tryoni</i> .....	Queensland fruit fly .....	100
<i>Brevipalpus chilensis</i> .....	False red spider mite .....	300
<i>Coccus viridis</i> .....	Green scale .....	400
<i>Conotrachelus nenuphar</i> .....	Plum curculio .....	92
<i>Crotophlebia ombrodelta</i> .....	Litchi fruit moth .....	250
<i>Cryptophlebia illepidia</i> .....	Koa seedworm .....	250
<i>Cylas formicarius elegantulus</i> .....	Sweetpotato weevil .....	165
<i>Cydia pomonella</i> .....	Codling moth .....	200
<i>Grapholita molesta</i> .....	Oriental fruit moth .....	200
<i>Rhagoletis pomonella</i> .....	Apple maggot .....	60
<i>Sternochetus mangiferae</i> (Fabricus) .....	Mango seed weevil .....	300
Fruit flies of the family <i>Tephritidae</i> not listed above .....		150
Plant pests of the phylum <i>Arthropoda</i> not listed above, except pupae and adults of the order <i>Lepidoptera</i> .....		300

\* \* \* \* \*

#### § 305.32 [Amended]

8. Section 305.32 would be amended as follows:

a. In paragraphs (a)(1) and (d), by removing the words “a minimum absorbed ionizing radiation dose of 150

Gray (15 krad)" and adding the words "the approved dose for Mexican fruit fly listed in § 305.31(a) of this subpart" in their place.

b. In paragraph (e)(2), by removing the words "150 Gray (15 krad)" and adding the words "the approved dose for Mexican fruit fly listed in § 305.31(a) of this subpart" in their place.

#### § 305.33 [Amended]

9. Section 305.33 would be amended as follows:

a. In paragraphs (a)(1) and (d), by removing the words "a minimum absorbed ionizing radiation dose of 225 Gray (22.5 krad)" and adding the words "the approved dose for Mediterranean fruit fly listed in § 305.31(a) of this subpart" in their place.

b. In paragraph (e)(2), by removing the words "225 Gray (22.5 krad)" and adding the words "the approved dose for Mediterranean fruit fly listed in § 305.31(a) of this subpart" in their place.

10. Section 305.34 would be amended as follows:

a. By revising the section heading to read as set forth below.

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

c. In paragraphs (b), (b)(1), (b)(2)(ii), and (b)(4), by adding the words " , Puerto Rico, or the U.S. Virgin Islands" after the word "Hawaii" each time it occurs.

#### § 305.34 Irradiation treatment of certain fruits and vegetables from Hawaii, Puerto Rico, and the U.S. Virgin Islands.

(a) *Approved irradiation treatment. (1) Commodity-specific doses.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the following fruits and vegetables from Hawaii at the specified dose levels:

##### IRRADIATION FOR PLANT PESTS IN HAWAIIAN FRUITS AND VEGETABLES

Commodity	Dose (gray)
Abiu .....	150
Atemoya .....	150
Bell pepper .....	150
Carambola .....	150
Eggplant .....	150
Litchi .....	150
Longan .....	150
Mango .....	300
Papaya .....	150
Pineapple (other than smooth Cayenne) .....	150
Rambutan .....	150
Sapodilla .....	150
Italian squash .....	150
Sweetpotato .....	400
Tomato .....	150

(2) *Pest specific doses.* Any fruits or vegetables not listed in paragraph (a)(1) of this section that are required by 7 CFR part 318 to be treated or subjected to inspection to control one or more of the plant pests listed in § 305.31(a) may instead be treated with irradiation. Fruits and vegetables treated with irradiation for plant pests listed in § 305.31(a) must be irradiated at the doses listed in § 305.31(a), and the irradiation treatment must be conducted in accordance with the other requirements of § 305.34.

#### PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

11. The authority citation for part 318 would continue to read as follows:

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

#### § 318.13 [Amended]

12. In § 318.13, paragraph (c) would be amended by removing the words "leaves in full force and effect § 318.30 which restricts the movement from Hawaii, Puerto Rico, or the Virgin Islands of the United States into or through any other State or certain Territories or Districts of the United States of all varieties of sweetpotatoes (*Ipomoea batatas* Poir.). It also".

13. Section 318.13–1 would be amended as follows:

a. In the definition of *compliance agreement*, by removing the words "§ 318.13–3(b), § 318.13–4(b), or § 318.13–4f of this subpart" and adding the words "§ 318.13(b) or § 318.13–4(b) of this subpart or § 305.34 of this chapter" in their place.

b. By revising the definition of *inspector* to read as set forth below.

#### § 318.13–1 Definitions.

*Inspector.* Any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

#### § 318.13–2 [Amended]

14. In § 318.13–2, in paragraph (b), the list of articles would be amended by adding, in alphabetical order, a new entry for "Sweetpotato (*Ipomoea batatas* Poir.)."

15. Section 318.13–3 would be amended as follows:

a. Paragraph (b)(3) would be revised to read as set forth below.

b. A new paragraph (b)(4) would be added to read as set forth below.

#### § 318.13–3 Conditions of movement.

\* \* \* \* \*

(b) \* \* \*  
(3) Untreated fruits and vegetables from Hawaii may be moved interstate for irradiation treatment on the mainland United States if the provisions of § 305.34 are met and if the fruits and vegetables are accompanied by a limited permit issued by an inspector in accordance with § 318.13–4(c). Untreated bananas from Hawaii may be moved interstate for irradiation treatment on the mainland United States if the provisions of § 318.13–4i(b) are met and if the bananas are accompanied by a limited permit issued by an inspector in accordance with § 318.13–4(c). The limited permit will be issued only if the inspector examines the shipment and determines that the shipment has been prepared in compliance with the provisions of this subpart.

(4) Untreated sweetpotatoes from Hawaii may be moved interstate for vapor heat treatment on the mainland United States if the provisions of § 318.13–4e are met and if the sweetpotatoes are accompanied by a limited permit issued by an inspector in accordance with § 318.13–4(c). The limited permit will be issued only if the inspector examines the shipment and determines that the shipment has been prepared in compliance with the provisions of this subpart.

#### § 318.13–4b [Amended]

16. In § 318.13–4b, paragraph (b) would be amended as follows:

a. By adding the words "or vegetables" after the word "fruits" each time it occurs.

b. By removing the words "fruit flies" and adding the words "plant pests" in their place.

c. By adding the word "sweetpotatoes," after the word "rambutan,".

17. A new § 318.13–4d would be added to read as follows:

#### § 318.13–4d Vapor heat treatment of sweetpotatoes from Hawaii.

(a) Vapor heat treatment, carried out in accordance with the provisions of this section, is approved as a treatment for sweetpotato from Hawaii.

(b) Sweetpotatoes may be moved interstate from Hawaii in accordance with this section only if the following conditions are met:<sup>2</sup>

<sup>2</sup> Sweetpotatoes may also be moved interstate from Hawaii in accordance with § 305.34 of this chapter or after fumigation with methyl bromide



(1) The sweetpotatoes must be treated in accordance with the vapor heat treatment schedule specified in § 305.24.

(2) The sweetpotatoes must be sampled, cut, and inspected and found to be free of the ginger weevil (*Elytrotreinus subtruncatus*). Sampling, cutting, and inspection must be performed under conditions that will prevent any pests that may emerge from the sampled sweetpotatoes from infesting any other sweetpotatoes intended for interstate movement in accordance with this section.

(3) The sweetpotatoes must be inspected and found to be free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*).

(4)(i) Sweetpotatoes that are treated in Hawaii must be packaged in the following manner:

(A) The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.<sup>3</sup>

(B) The pallet-load of cartons must be wrapped before it leaves the treatment facility in one of the following ways:

(1) With polyethylene sheet wrap;

(2) With net wrapping; or

(3) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(C) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(ii) Cartons of untreated sweetpotatoes that are moving to the mainland United States for treatment must be shipped in shipping containers sealed prior to interstate movement with seals that will visually indicate if the shipping containers have been opened.

(5)(i) *Certification on basis of treatment.* A certificate shall be issued by an inspector for the movement of sweetpotatoes from Hawaii that have been treated and handled in Hawaii in accordance with this section. To be certified for interstate movement under

this section, sweetpotato from Hawaii must be sampled, cut, and inspected by an inspector and found by an inspector to be free of the ginger weevil (*Elytrotreinus subtruncatus*) and inspected and found by an inspector to be free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*), and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) before undergoing vapor heat treatment in Hawaii.

(ii) *Limited permit.* A limited permit shall be issued by an inspector for the interstate movement of untreated sweetpotato from Hawaii for treatment on the mainland United States in accordance with this section. To be eligible for a limited permit under this section, untreated sweetpotato from Hawaii must be sampled, cut, and inspected in Hawaii by an inspector and found by an inspector to be free of the ginger weevil (*Elytrotreinus subtruncatus*) and inspected and found by an inspector to be free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*), and the Kona coffee-root knot nematode (*Meloidogyne konaensis*).

18. Section 318.13–4f would be revised to read as set forth below.

**§ 318.13–4f Irradiation treatment of certain fruits and vegetables from Hawaii.**

Irradiation, carried out in accordance with the provisions in § 305.34 of this chapter, is approved as a treatment for the following fruits and vegetables: Abiu, atemoya, bell pepper, carambola, eggplant, litchi, longan, mango, papaya, pineapple (other than smooth Cayenne), rambutan, sapodilla, Italian squash, sweetpotato, and tomato. Any other fruits or vegetables that are required by this subpart to be treated or subjected to inspection to control one or more of the plant pests listed in § 305.31(a) of this chapter may instead be treated with irradiation. Fruits and vegetables treated with irradiation for plant pests listed in § 305.31(a) must be irradiated at the doses listed in § 305.31(a), and the irradiation treatment must be conducted in accordance with the other requirements of § 305.34.

(Approved by the Office of Management and Budget under control number 0579–0198)

19. Section 318.13–4i would be amended as follows:

a. By revising the section heading to read as set forth below.

b. By redesignating paragraphs (a), (b), (c), and (d) as paragraphs (a)(1), (a)(2), (a)(3), and (a)(4), respectively, and by designating the introductory text of the section as paragraph (a), introductory text.

c. By adding a new paragraph (b) to read as set forth below.

**§ 318.13–4i Conditions governing the movement of bananas from Hawaii.**

\* \* \* \* \*

(b) Bananas of any cultivar or ripeness may also be moved interstate from Hawaii in accordance with the following conditions:

(1) The bananas are irradiated at the minimum dose listed in § 305.31(a) of this part and in accordance with the other requirements in § 305.34 of this part for the Mediterranean fruit fly (*Ceratitis capitata*), the melon fruit fly (*Bactrocera curcurbitae*), the Oriental fruit fly (*Bactrocera dorsalis*), and the green scale (*Coccus viridis*) and are inspected in Hawaii and found to be free of the banana moth (*Opogona sacchari* (Bojen)) by an inspector before or after undergoing irradiation treatment; or

(2) The bananas are irradiated at the minimum dose listed in § 305.31(a) of this part and in accordance with the other requirements in § 305.34 of this part for the Mediterranean fruit fly (*Ceratitis capitata*), the melon fruit fly (*Bactrocera curcurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*) and are inspected in Hawaii and found to be free of the green scale (*Coccus viridis*) and the banana moth (*Opogona sacchari* (Bojen)) before or after undergoing irradiation treatment.

(3)(i) A certificate shall be issued by an inspector for the movement of bananas from Hawaii that have been treated and inspected in Hawaii in accordance with this paragraph § 318.13–4i(b). To be certified for interstate movement under this paragraph, bananas from Hawaii must be treated, inspected, and, if necessary, culled in accordance with the requirements of this paragraph prior to interstate movement from Hawaii.

(ii) A limited permit shall be issued by an inspector for the interstate movement of untreated bananas from Hawaii for treatment on the mainland United States in accordance with this section. To be eligible for a limited permit under this paragraph § 318.13–4i(b), bananas from Hawaii must be inspected in accordance with the requirements of this paragraph prior to interstate movement from Hawaii.

**Subpart—Sweetpotatoes [Removed]**

20. Subpart—Sweetpotatoes, consisting of §§ 318.30 and 318.30a, would be removed.

**§ 318.58 [Amended]**

21. In § 318.58, paragraph (d) would be amended by removing the words

according to treatment schedule T–101–b–3–1, as provided for in § 305.6(a) of this chapter.

<sup>3</sup> If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Inspection and Technology, 1017 Main Campus Drive, suite 2500, Raleigh, NC 27606.

“leaves in full force and effect § 318.30 which restricts the movement from Hawaii, Puerto Rico, or the Virgin Islands of the United States into or through any other State or certain Territories or Districts of the United States of all varieties of sweetpotatoes (*Ipomoea batatas* Poir.). It also”.

22. In § 318.58–1, the definition of *inspector* would be revised to read as set forth below.

**§ 318.58–1 Definitions.**

\* \* \* \* \*

*Inspector.* Any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

\* \* \* \* \*

**§ 318.58–2 [Amended]**

23. In § 318.58–2, in paragraph (b)(2), the list of articles would be amended by adding, in alphabetical order, a new entry for “Sweetpotato (*Ipomoea batatas* Poir.).”

24. A new section § 318.58–4b would be added to read as set forth below.

**§ 318.58–4b Irradiation treatment of fruits and vegetables from Puerto Rico and the U.S. Virgin Islands.**

Any fruits or vegetables from Puerto Rico or the U.S. Virgin Islands that are required by this subpart to be treated or subjected to inspection to control one or more of the plant pests listed in § 305.31(a) of this chapter may instead be treated with irradiation. Fruits and vegetables treated with irradiation for plant pests listed in § 305.31(a) must be irradiated at the doses listed in § 305.31(a), and the irradiation treatment must be conducted in accordance with the other requirements of § 305.34.

25. A new section § 318.58–4c would be added to read as follows.

**§ 318.58–4c Movement of sweetpotatoes from Puerto Rico to certain ports.**

Sweetpotatoes from Puerto Rico may be moved interstate to Atlantic Coast ports north of and including Baltimore, MD, if the following conditions are met:

(a) The sweetpotatoes must be certified by an inspector of the Commonwealth of Puerto Rico as having been grown under the following conditions:

(1) Fields in which the sweetpotatoes have been grown must have been given a preplanting treatment with an approved soil insecticide.

(2) Before planting in such treated fields, the sweetpotato draws and vine cuttings must have been dipped in an approved insecticidal solution.

(3) During the growing season an approved insecticide must have been applied to the vines at prescribed intervals.

(b) An inspector of the Commonwealth of Puerto Rico must certify that the sweetpotatoes have been washed.

(c) The sweetpotatoes must be graded by inspectors of the Commonwealth of Puerto Rico in accordance with Puerto Rican standards which do not provide a tolerance for insect infestation or evidence of insect injury and found by such inspectors to comply with such standards prior to movement from Puerto Rico.

(d) The sweetpotatoes must be inspected by an inspector and found to be free of the sweetpotato scarabee (*Euscepes postfasciatus* Fairm.).

**PART 319—FOREIGN QUARANTINE NOTICES**

26. The authority citation for part 319 would continue to read as follows:

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

**§ 319.56–2 [Amended]**

27. In § 319.56–2, paragraph (k) would be amended by removing the words “11 species of fruit flies and one species of seed weevil” and adding the words “plant pests” in their place.

**§ 319.56–2x [Amended]**

28. In § 319.56–2x, the introductory text in paragraph (a) would be amended by removing the words “mango seed weevil *Sternonchus mangiferae* (Fabricus) or for one or more of the following 11 species of fruit flies: *Anastrepha fraterculus*, *Anastrepha ludens*, *Anastrepha obliqua*, *Anastrepha serpentina*, *Anastrepha suspensa*, *Bactrocera cucurbitae*, *Bactrocera dorsalis*, *Bactrocera tryoni*, *Bactrocera jarvisi*, *Bactrocera latifrons*, and *Ceratitidis capitata*” and adding the words “plant pests listed in § 305.31(a)” in their place.

Done in Washington, DC, this 3rd day of June 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Parts 260 and 284**

[Docket No. RM05–12–000]

**Modification of Natural Gas Reporting Regulations**

May 27, 2005.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to standardize the filing format for reporting natural gas service interruptions and emergency natural gas sale, transportation and exchange. The Commission is also proposing to modernize the filing method, develop a tracking method for filings, and develop an electronic notification system to notify appropriate Commission staff when the information is filed with the Commission. In addition, the Commission seeks comment on affording Critical Energy Infrastructure Information (CEII) protection where applicable. These modifications are the result of a review conducted by the Commission’s Information Assessment Team (FIAT) of the Commission’s current information collections by evaluating their original purposes and current uses, and to propose ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reformatting of current collections. The modification of the regulations to modernize the filing method and standardize the filing format should streamline the process and reduce the burden of filing information under FERC–576 “Report of Natural Gas Service Interruptions” and FERC–588 “Emergency Natural Gas Sale, Transportation and Exchange Transactions.” In addition, the Commission proposes to provide CEII protection for the information contained on both information collection requirements and seeks comment on this proposal. The Commission believes these modifications will not in any way prejudice the rights of any participant in those proceedings or anyone interested in the Commission’s natural gas program.

**DATES:** Comments are due July 25, 2005.

**ADDRESSES:** Comments may be filed electronically via the eFiling link on the Commission’s Web site at <http://www.ferc.gov>. Commenters unable to