

# 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 305 and 318

[Docket No. APHIS–2007–0050]

RIN 0579–AC62

#### Interstate Movement of Fruit From Hawaii

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Hawaiian fruits and vegetables regulations to allow mangosteen, dragon fruit, melon, pods of cowpea and its relatives, breadfruit, jackfruit, and fresh moringa pods to be moved interstate from Hawaii under certain conditions. This action would allow the movement of these tropical fruits from Hawaii to the continental United States while continuing to provide protection against the spread of plant pests from Hawaii to the continental United States.

**DATES:** We will consider all comments that we receive on or before January 14, 2008.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2007–0050 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0050,

Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0050.

*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:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. David B. Lamb, Import Specialist, Commodity Import Analysis and Operations, PPQ, VS, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8758.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Hawaiian fruits and vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables from Hawaii to the continental United States. The regulations are necessary to prevent the spread of plant diseases and pests that occur in Hawaii but not in the continental United States.

The regulations in § 318.13–4f identify specific fruits and vegetables that are allowed to be moved interstate from Hawaii if, among other things, they are treated with irradiation in accordance with our phytosanitary treatments regulations in 7 CFR part 305. The regulations in part 305 require that:

1. Irradiation treatment must be carried out only in Hawaii or in non-fly supporting areas of the United States (i.e., States other than Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia);

2. The irradiation treatment facility and treatment protocol must be

approved by the Animal and Plant Health Inspection Service (APHIS);

3. In order to be approved, a facility must be able to administer the minimum absorbed ionizing radiation doses specified in paragraph (a) of § 305.34 to the articles, be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, complete a compliance agreement with APHIS, and be certified by Plant Protection and Quarantine, APHIS, for initial use and annually for subsequent use;

4. Irradiation treatment must be monitored by an inspector, who may be either an APHIS employee or a designated State plant regulatory official;

5. If treated in Hawaii, the fruits and vegetables must be packaged in pest-proof cartons and must be sealed with seals that will visually indicate if the cartons have been opened. Then, the pallet-load of pest-proof cartons must be wrapped, before leaving the irradiation 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. In addition, pallet loads must be labeled before leaving the irradiation facility with treatment lot numbers, packaging, and treatment facility identification and location, and dates of packing and treatment;

6. If moving to the mainland for treatment, the untreated fruits and vegetables must be shipped in shipping containers sealed prior to interstate movement with seals that will visually indicate if the shipping containers have been opened;

7. The fruits and vegetables must receive the minimum absorbed ionizing radiation doses specified in paragraph (a) of § 305.34;

8. Dosimetry systems in the irradiation facility must map, control, and record the absorbed doses;

9. The absorbed dose must be measured by a dosimeter that can accurately measure the absorbed doses specified in paragraph (a) of § 305.34;

10. The number and placement of dosimeters must be in accordance with American Society of Testing and Materials standards;

11. The irradiation facility must keep records or invoices for each treatment lot for a period that exceeds the shelf

life of the irradiated food product by 1 year and must make those records available to an inspector for inspection; and

12. An inspector will issue a certificate for the interstate movement of fruits and vegetables treated and handled in Hawaii in accordance with the regulations in § 305.34. An inspector will issue a limited permit for the interstate movement of untreated fruits and vegetables from Hawaii for irradiation treatment on the continental United States in accordance with the regulations in § 305.34.

Paragraphs (c) and (d) of § 305.34 set forth procedures for applying for approval and inspection of a treatment facility, and procedures for denial and withdrawal of approval.

Paragraph (e) of § 305.34 further provides that the U.S. Department of Agriculture and its inspectors are not responsible for any loss or damage resulting from any treatment prescribed or supervised.

The State of Hawaii has requested that APHIS amend the regulations to allow the interstate movement of commercial shipments of Hawaiian breadfruit (*Artocarpus altilis*), fresh pods of cowpea (*Vigna unguiculata*) and its relatives, dragon fruit (species of *Hylocereus* and *Selenicereus*), jackfruit (*Artocarpus heterophyllus*), mangosteen (*Garcinia mangostana*), melon (*Cucumis melo*), and fresh moringa pods (*Moringa oleifera*) following irradiation treatment. All of these tropical fruits are currently prohibited from being moved to the continental United States from the State of Hawaii.

As part of our evaluation of that request, we have prepared pest risk assessments (PRAs) for the commodities under consideration and a risk management document that proposes risk mitigation measures to prevent the plant pests associated with each fruit from being introduced into the continental United States. Copies of the PRAs and the risk management document can be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The risk management document considered the protections that would be afforded by compliance with the provisions of § 305.34 (i.e., the requirements described previously), determined that they were appropriate to address the risks presented by some of the pests of concern, and suggested some additional mitigations to address the remaining identified risks. Based on those suggestions in the risk

management document, we propose the following measures be applied to breadfruit, fresh pods of cowpea and its relatives, dragon fruit, jackfruit, mangosteen, melon, and fresh moringa pods moved from the State of Hawaii to the continental United States.

#### *Breadfruit and Jackfruit*

The PRA for breadfruit and jackfruit identified 13 quarantine pests which could potentially follow the pathway from Hawaii to the continental United States. These included several species of fruit fly, scale insects, mealybugs, and thrips. The PRA also identified the fungus *Phytophthora tropicalis* as a pathogen likely to follow the pathway.

We have found that irradiation at the 150 gray dose is effective against all fruit flies and certain other pests.<sup>1</sup> To protect against the introduction of other insect pests into the continental United States, we would require that breadfruit and jackfruit to be treated with the 150 gray dose would have to either receive a post-harvest dip in accordance with treatment schedule T102-c (warm soapy water and brushing) as provided in § 305.42(b), or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. The fruit would also have to be inspected after harvest by an APHIS inspector in Hawaii and found free of spiraling whitefly (*Aleurodicus disperses*), inornate scale (*Aonidiella inornata*), green scale (*Coccus viridis*), red wax scale (*Ceroplastes rubens*), gray pineapple mealybug (*Dysmicoccus neobrevipes*), pink hibiscus mealybug (*Maconellicoccus hirsutus*), spherical mealybug (*Nipaecoccus viridis*), citrus mealybug (*Pseudococcus cryptus*), and melon thrips (*Thrips palmi*). The fruit would also have to be inspected for signs of thrip damage.

The 400 gray dose has been found to be effective against all insect pests, excluding adults and pupae of the order Lepidoptera, which are the stages that generally do not feed on fruit or pods. The PRA for breadfruit and jackfruit did not identify any quarantine significant Lepidopteran pests likely to follow the pathway. Therefore, breadfruit and jackfruit receiving treatment at the 400 gray dose in Hawaii would not be required to undergo additional inspection in Hawaii for insect pests.

<sup>1</sup> There is no data regarding the radio-tolerance of breadfruit and jackfruit at the dose levels used by USDA approved irradiation treatments.

Fruit to be moved interstate for treatment on the mainland would have to be treated with a minimum absorbed dose of 400 gray.

However, neither the 150 gray nor the 400 gray dose has been determined to be effective against the fungus *Phytophthora tropicalis*. Therefore, in addition to irradiation, breadfruit and jackfruit would have to receive a post-harvest fungicidal dip appropriate for the fungus *Phytophthora tropicalis* or originate from an orchard that was previously treated with an appropriate fungicide during the growing season and a pre-harvest inspection of the orchard found the fruit free of symptoms of the fungus.

Regardless of the irradiation dose applied, the fruit would have to be free of leaves and stems. Breadfruit and jackfruit moved into the continental United States after treatment in Hawaii would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

#### *Cowpea and Its Relatives*

The PRA for fresh pods of cowpea and its relatives identified 11 quarantine pests which could potentially follow the pathway from Hawaii to the continental United States. These included several species of fruit flies, mealybugs, and thrips, as well as cassava red mite (*Oligonychus biharensis*) and several Lepidopteran pests.

Fresh pods of cowpea and its relatives would have to be treated with a minimum absorbed dose of 400 gray because the 150 gray dose is not known to be effective against the internal stages of pests of the order Lepidoptera. The 400 gray dose is effective against all insect pests, excluding adults and pupae of the order Lepidoptera. However, neither the 150 gray nor the 400 gray dose have been determined to be effective against the cassava red mite. Therefore, fresh pods of cowpea and its relatives would have to be inspected after harvest by an APHIS inspector in Hawaii and found free of adults and pupae of the order Lepidoptera and the cassava red mite.

The pods would have to be free of leaves and stems. Pods moved into the continental United States after treatment in Hawaii would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

#### *Dragon Fruit*

The PRA for dragon fruit identified five quarantine significant pests which could potentially follow the pathway from Hawaii to the continental United

States. These included two species of fruit fly, Oriental fruit fly (*Bactrocera dorsalis*), and Mediterranean fruit fly (*Ceratitis capitata*), and three species of mealybug.

We have found that irradiation at the 150 gray dose is effective against all fruit flies and certain other pests. To protect against the introduction of other insect pests into the continental United States, we would require that dragon fruit to be treated with the 150 gray dose would have to either receive a post-harvest dip in accordance with treatment schedule T102-c (warm soapy water and brushing) as provided in § 305.42(b), or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. We would also require dragon fruit to be treated with the 150 gray dose to be inspected after harvest by an APHIS inspector in Hawaii and found free of gray pineapple mealybug, pink hibiscus mealybug, and citrus mealybug. Sepals, if present on the fruit sampled for inspection, would have to be removed during the pre-departure inspection.

The 400 gray dose is effective against all insect pests, excluding adults and pupae of the order Lepidoptera. The PRA for dragon fruit did not identify any Lepidopteran quarantine pests likely to follow the pathway. Dragon fruit receiving treatment at the 400 gray dose in Hawaii would not be required to undergo additional inspection in Hawaii for insect pests. Fruit to be moved interstate for treatment on the continental would have to be treated with a minimum absorbed dose of 400 gray.

Regardless of the irradiation dose applied, the fruit would have to be free of leaves and stems. Dragon fruit moved into the continental United States after treatment in Hawaii would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

#### *Mangosteen*

The PRA for mangosteen identified six quarantine pests which could potentially follow the pathway from Hawaii to the continental United States, including fruit flies, mealybugs, and *Thrips florim*.

We have found that irradiation at the 150 gray dose is effective against all fruit flies and certain other pests. To protect against the introduction of other insect pests into the continental United States, we would require that

mangosteen to be treated with the 150 gray dose would have to either receive a post-harvest dip in accordance with treatment schedule T102-c (warm soapy water and brushing) as provided in § 305.42(b), or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. We would also require mangosteen to be inspected after harvest by an APHIS inspector in Hawaii and found free of gray pineapple mealybug, pink hibiscus mealybug, citrus mealybug, and *Thrips florim*. Sepals, if present on the fruit sampled for inspection, would have to be removed during the pre-departure inspection.

The 400 gray dose is effective against all insect pests, excluding adults and pupae of the order Lepidoptera. The PRA for mangosteen did not identify any quarantine significant Lepidopteran pests likely to follow the pathway. Mangosteen receiving treatment at the 400 gray dose in Hawaii would not be required to undergo additional inspection for insect pests. Fruit to be moved interstate for treatment on the continental would have to be treated with a minimum absorbed dose of 400 gray.

Regardless of the irradiation dose applied, the fruit would have to be free of leaves and stems. Mangosteen moved into the continental United States from Hawaii would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

#### *Melon*

The PRA for melon identified four quarantine significant pests which could potentially follow the pathway from Hawaii to the continental United States, including fruit flies and spiraling whitefly.

We have found that irradiation at the 150 gray dose is effective against all fruit flies and certain other pests. To protect against the introduction of other insect pests into the continental United States, we would require that melons to be treated with the 150 gray dose would have to either receive a post-harvest dip in accordance with treatment schedule T102-c (warm soapy water and brushing) as provided in § 305.42(b), or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface

pests as prescribed in a compliance agreement. We would also require Hawaiian melons to be inspected after harvest by an APHIS inspector in Hawaii and found free of spiraling whitefly.

The 400 gray dose is effective against all insect pests, excluding adults and pupae of the order Lepidoptera. The PRA for melon did not identify any quarantine significant Lepidopteran pests likely to follow the pathway. Melons receiving treatment at the 400 gray dose in Hawaii would not be required to undergo additional inspection for insect pests. Fruit to be moved interstate for treatment on the continental would have to be treated with a minimum absorbed dose of 400 gray.

Regardless of the irradiation dose applied, the fruit would have to be washed to remove dirt and be free of leaves and stems. Melons moved into the continental United States after treatment in Hawaii would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

#### *Moringa Pods*

The PRA for fresh moringa pods identified seven quarantine significant pests which could potentially follow the pathway from Hawaii to the continental United States, including fruit flies, spiraling whitefly, scale insects, and citrus mealybug.

We have found that irradiation at the 150 gray dose is effective against all fruit flies and certain other pests. To protect against the introduction of other insect pests into the continental United States, we would require that moringa pods to be treated with the 150 gray dose would have to be either receive a post-harvest dip in accordance with treatment schedule T102-c (warm soapy water and brushing) as provided in § 305.42(b), or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. We would also require moringa pods to be inspected after harvest by an APHIS inspector in Hawaii and found free of spiraling whitefly, inornate scale, green scale, and citrus mealybug.

The 400 gray dose is effective against all insect pests, excluding adults and pupae of the order Lepidoptera. The PRA for moringa pods did not identify any Lepidopteran quarantine pests likely to follow the pathway. Moringa pods receiving treatment at the 400 gray

dose in Hawaii would not be required to undergo additional inspection or treatment for insect pests. Moringa pods to be moved interstate for treatment on the continental would have to be treated with a minimum absorbed dose of 400 gray.

Regardless of the irradiation dose applied, moringa pods moved into the continental United States would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

We believe the mitigations described above will allow these tropical fruits to move from Hawaii to the continental United States while continuing to prevent plant pests from entering the continental United States from Hawaii.

#### *Irradiation Treatments for Three Additional Pests*

Paragraph (a) of § 305.31 currently provides approved irradiation doses against the specific plant pests that may be present on fruits and vegetables that are imported into the United States. Studies by the Department's Agricultural Research Service have found that a minimum absorbed dose of 150 gray is adequate to treat commodities in which coconut scale (*Aspidiotus destructor*)<sup>2</sup> and white peach scale (*Pseudaulacaspis pentagona*)<sup>3</sup> may be present, and that a minimum absorbed dose of 100 gray is adequate to treat commodities in which *Copitarsia decolora* (Lepidoptera: Noctuidae)<sup>4</sup> may be present. Therefore, we propose to amend § 305.31(a) to add

these irradiation doses for these three plant pests.

#### **Executive Order 12866 and Regulatory Flexibility Act**

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

This proposed rule would allow the interstate movement mangosteen, dragon fruit, melon, fresh pods of cowpea and its relatives, breadfruit, jackfruit, and moringa pods from Hawaii after irradiation treatment. As a condition of entry, these fruits would have to meet certain other inspection and treatment requirements. This action would allow for the interstate movement of these fruits into the continental United States while continuing to provide protection against the introduction of quarantine pests.

Tropical specialty fruit production in Hawaii has been increasing rapidly in recent years.<sup>5</sup> Hawaii's growers produced and sold an estimated 1.5 million pounds of tropical specialty fruit in 2005, the highest sales on record and 50 percent more than was produced and sold in 2004.<sup>6</sup> Higher yields from maturing orchards and expansion of the harvested area have contributed to the increased production. Sales in 2005 were valued at \$2.7 million, 40 percent more than in 2004.

This proposed rule, if finalized, is not expected to result in significant economic effects on mainland U.S.

producers. The tropical specialty fruits included in this proposed rule are not commercially grown in the continental United States. The proposed rule would benefit Hawaiian producers by providing a broader market for these fruits. Their movement from Hawaii would compete against imports from other countries, and the only effects for U.S. producers would be the benefits that accrue to Hawaiian producers.

Melons and cowpeas are produced in the continental United States, but effects of allowing the interstate movement of melons from Hawaii on U.S. mainland producers of these products are expected to be minimal.

#### *Melons*

The predominant U.S. melon varieties are cantaloupes, honeydews, and watermelons, for which the value of U.S. production was approximately \$866 million in 2006 (table 1). Over 80 percent of melon production takes place in five States. California is the leading domestic producer of all melons, accounting for 33 percent of total acreage; followed by Texas, with 15 percent; Georgia, with 12 percent; Arizona, with 11 percent, and Florida, with 10 percent. The United States is a net importer of melons. In 2006, the total value of melons imported into the United States was \$350 million, compared to \$189 million worth of melons exported.<sup>7</sup> Nearly all (99 percent) melon farmers have receipts of not more than \$750,000 annually, and are therefore classified by the Small Business Administration (SBA) as small entities.

TABLE 1.—VALUE OF U.S. MELON PRODUCTION, 2004–2006

Commodity	2004	2005	2006
Cantaloupe .....	\$322,188,000	\$335,818,000	\$340,677,000
Honeydews .....	92,133,000	91,569,000	90,600,000
Watermelons .....	313,217,000	445,917,000	434,861,000
Total .....	727,538,000	873,304,000	866,138,000

Source: National Agricultural Statistics Service.

We do not know the quantity or type of melons that would be moved from Hawaii to the continental United States under this rule, but we do not expect the quantity to be significant in relation

to our total domestic supply. For example, the most recent NASS data on the farm value of watermelon produced in Hawaii show a value of \$2.4 million in 2004, which is less than 1 percent of

the value of U.S. melon imports of all types.

Entry of Hawaiian melons into markets in the continental United States is not expected to have a significant

<sup>2</sup> Follett, P.A. "Irradiation as a phytosanitary treatment for *Aspidiotus destructor* Signoret (Homoptera: Diaspididae)." *Journal of Economic Entomology* 99: 1138–1142.

<sup>3</sup> Follett, P.A. "Irradiation as a phytosanitary treatment for White Peach Scale (Homoptera: Diaspididae)." *Journal of Economic Entomology* 99: 1974–1978.

<sup>4</sup> Maldonado, Marisela Huamán. "Final report: Gamma irradiation as a quarantine treatment

against *Copitarsia decolora* (Guenée) in fresh asparagus." Copies of this technical report can be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

<sup>5</sup> Tropical specialty fruits include: Abiu, atemoya, breadfruit, caimito, canistel, cherimoya, durian, jaboticaba, jackfruit, langsat, longan, loquat, litchi, mango, mangosteen, persimmon, poha, rambutan,

rollina, sapodilla, soursop, starfruit, and white sapote.

<sup>6</sup> The statistics in this paragraph are taken from USDA National Agricultural Statistics Service (NASS), "Hawaii Tropical Specialty Fruits," released August 8, 2006. <http://www.nass.usda.gov/hifruit/tropfrt.pdf>.

<sup>7</sup> World Trade Atlas 2006.

economic impact on mainland prices or production, especially given the irradiation treatment costs and transport costs that merchants of Hawaiian melons would have to bear. Moreover, depending on the type of melon, relative prices, and quality, shipments from Hawaii to the continental United States may at least partially substitute for imports, thereby further reducing any effects on mainland producers.

#### *Fresh Cowpea Pods*

The 2002 Census of Agriculture (the most recent year for which data are available) states that 151 farms harvested 13,651 acres of cowpeas in 2002. Cowpeas, also known as southern peas, blackeye peas, or crowder, are not routinely harvested as fresh cowpea pods but are allowed to dry before harvesting. Nearly all (99 percent) cowpea farmers have receipts of not more than \$750,000 annually, and therefore are small entities according to SBA standards.

Fresh cowpea pods are not sold commercially by producers in the continental United States; only dried cowpea pods are marketed. Since fresh cowpea pods are not generally used as a substitute for dried cowpeas, interstate movement of fresh cowpea pods from Hawaii would not significantly impact the mainland's commercial production of cowpeas. Rather, the fresh cowpea pods from Hawaii are expected to be sold as a fresh or frozen vegetable. Immature snapped cowpea pods are used in the same way as snap beans, often mixed with other foods.<sup>8</sup> Green cowpea seeds can be boiled as a fresh vegetable.

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.

#### **National Environmental Policy Act**

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with importation of tropical fruits from Hawaii into the continental United States, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### **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. APHIS–2007–0050. Please send a copy of your comments to: (1) Docket No. APHIS–2007–0050, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 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 amend the Hawaiian fruit and vegetable regulations to allow mangosteen, dragon fruit, pods of cowpea and its relatives, breadfruit, jackfruit, and fresh moringa pods to be

moved interstate from Hawaii under certain conditions. This action would allow the movement of these tropical fruits from Hawaii to the continental United States while continuing to provide protection against the spread of plant pest from Hawaii to the continental United States.

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 0.2000 hours per response.

*Respondents:* Importers of fruits and vegetables.

*Estimated annual number of respondents:* 110.

*Estimated annual number of responses per respondent:* 24.7636.

*Estimated annual number of responses:* 2,724.

*Estimated total annual burden on respondents:* 545 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.

#### **E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related

<sup>8</sup> Alternative Field Crops Manual, "Cowpea," <http://www.hort.purdue.edu/newcrop/afcm/cowpea.html>.

to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### Lists of Subjects

##### 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.

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

#### PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 continues to read as follows:

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 U.S.C. 2.22, 2.80, and 371.3.

2. In § 305.31, paragraph (a), the table is amended by adding new entries, in alphabetical order, for “*Aspidiotus destructor*”, “*Copitarsia decolora*”, and “*Pseudaulacaspis pentagona*” to read as follows:

#### § 305.31 Irradiation treatment of imported regulated articles for certain plant pests.

(a) \* \* \*

#### IRRADIATION FOR CERTAIN PLANT PESTS IN IMPORTED REGULATED ARTICLES <sup>1</sup>

Scientific name	Common name	Dose (gray)
* * * * *		
<i>Aspidiotus destructor</i> .....	Coconut scale .....	150
* * * * *		
<i>Copitarsia decolora</i> .....	(No common name) .....	100
* * * * *		
<i>Pseudaulacaspis pentagona</i> .....	White peach scale .....	150
* * * * *		

<sup>1</sup> There is a possibility that some cut flowers could be damaged by such irradiations. See paragraph (n) of this section.

3. Section 305.34 is amended as follows:

a. By adding, in alphabetical order, new entries to the table in paragraph (a) for breadfruit, cowpea pods (and its relatives), dragon fruit, jackfruit, mangosteen, melon, and moringa pods to read as set forth below.

b. In the table in paragraph (a), by revising footnote 1 and adding a new footnote 2 to read as set forth below.

c. By revising paragraph (b)(7) to read as set forth below.

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

(a) \* \* \*

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

Commodity	Dose (gray)
* * * * *	
Breadfruit <sup>1 2</sup> .....	400 or 150.
* * * * *	
Cowpea pods (and its relatives) <sup>1</sup> .	400.
* * * * *	
Dragon fruit <sup>1 2</sup> .....	400 or 150.

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

Commodity	Dose (gray)
* * * * *	
Jackfruit <sup>1 2</sup> .....	400 or 150.
* * * * *	
Mangosteen <sup>1 2</sup> .....	400 or 150.
Melon <sup>1 2</sup> .....	400 or 150.
* * * * *	
Moringa pods <sup>1 2</sup> .....	400 or 150.
* * * * *	

<sup>1</sup> Breadfruit, cowpea pods, dragon fruit, jackfruit, litchi, mangosteen, melon, moringa pods, and sweetpotato are also subject to the additional inspection and treatment requirements in paragraph (b)(7) of this section.

<sup>2</sup> Breadfruit, dragon fruit, jackfruit, mangosteen, melon, and moringa pods moving to the continental United States for treatment under limited permit in accordance with the requirements of paragraph (b)(7)(ii) of this section must be treated with the 400 gray dose.

\* \* \* \* \*

(b) \* \* \*

(7)(i) *Certification on basis of treatment.* A certificate shall be issued by an inspector for the movement of articles from Hawaii that have been

treated and handled in accordance with this section.

(A) To be certified for interstate movement under this section, litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector before undergoing irradiation treatment in Hawaii for fruit flies.

(B) To be certified for interstate movement under this section, sweetpotato from Hawaii must be inspected in Hawaii and found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*), and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector before undergoing irradiation treatment in Hawaii. In addition, sweetpotato from Hawaii to be treated with irradiation at a dose of 150 Gy must be sampled, cut, and inspected in Hawaii and found to be free of the ginger weevil (*Elytrotreinus subtruncatus*) by an inspector before undergoing irradiation treatment in Hawaii. 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.

(C) To be certified for interstate movement under this section, breadfruit and jackfruit from Hawaii must be inspected in Hawaii and found free of spiraling whitefly (*Aleurodicus dispersus*), inornate scale (*Aonidiella inornata*), red wax scale (*Ceroplastes rubens*), green scale (*Coccus viridis*), gray pineapple mealybug (*Dysmicoccus neobrevipes*), pink hibiscus mealybug (*Maconellicoccus hirsutus*), spherical mealybug (*Nipaecoccus viridis*), citrus mealybug (*Pseudococcus cryptus*), melon thrips (*Thrips palmi*) and signs of thrip damage before undergoing irradiation treatment in Hawaii at the 150 gray dose. Fruit receiving the 150 gray dose also must either receive a post-harvest dip in accordance with treatment schedule T102-c as provided in § 305.42(b) or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at the 400 gray dose. Regardless of irradiation dose, the fruit must be free of stems and leaves and must originate from an orchard that was previously treated with a fungicide appropriate for the fungus *Phytophthora tropicalis* during the growing season and the fruit must be inspected prior to harvest and found free of the fungus or, after irradiation treatment, must receive a post-harvest fungicidal dip appropriate for *Phytophthora tropicalis*.

(D) To be certified for interstate movement under this section, fresh pods of cowpea and its relatives from Hawaii must be inspected in Hawaii and found free of the cassava red mite (*Oligonychus biharensis*) and adults and pupae of the order Lepidoptera before undergoing irradiation treatment. The pods must be free of stems and leaves.

(E) To be certified for interstate movement under this section, dragon fruit from Hawaii presented for inspection must have the sepals removed and must be inspected in Hawaii and found free of gray pineapple mealybug (*Dysmicoccus neobrevipes*), pink hibiscus mealybug (*Maconellicoccus hirsutus*), and citrus mealybug (*Pseudococcus cryptus*) before undergoing irradiation treatment in Hawaii at the 150 gray dose. Fruit receiving the 150 gray dose also must either receive a post-harvest dip in accordance with treatment schedule T102-c as provided in § 305.42(b) or originate from an orchard or growing area that was previously treated with a

broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at the 400 gray dose. Regardless of irradiation dose, the fruit must be free of stems and leaves.

(F) To be certified for interstate movement under this section, mangosteen from Hawaii must have the sepals removed and must be inspected in Hawaii and found free of gray pineapple mealybug (*Dysmicoccus neobrevipes*), pink hibiscus mealybug (*Maconellicoccus hirsutus*), citrus mealybug (*Pseudococcus cryptus*), and *Thrips florum* before undergoing irradiation treatment in Hawaii at the 150 gray dose. Fruit receiving the 150 gray dose also must either receive a post-harvest dip in accordance with treatment schedule T102-c as provided in § 305.42(b) or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at the 400 gray dose. Regardless of irradiation dose, the fruit must be free of stems and leaves.

(G) To be certified for interstate movement under this section, melon from Hawaii must be inspected in Hawaii and found free of spiraling whitefly (*Aleurodicus dispersus*) before undergoing irradiation treatment in Hawaii at the 150 gray dose. Fruit receiving the 150 gray dose also must either receive a post-harvest dip in accordance with treatment schedule T102-c as provided in § 305.42(b) or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at the 400 gray dose. Regardless of irradiation dose, melons must be washed to remove dirt and must be free of stems and leaves.

(H) To be certified for interstate movement under this section, moringa pods from Hawaii must be inspected in Hawaii and found free of spiraling whitefly (*Aleurodicus dispersus*),

inornate scale (*Aonidiella inornata*), green scale (*Coccus viridis*), and citrus mealybug (*Pseudococcus cryptus*) before undergoing irradiation treatment in Hawaii at the 150 gray dose. Fruit receiving the 150 gray dose also must either receive a post-harvest dip in accordance with treatment schedule T102-c as provided in § 305.42(b) or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at the 400 gray dose.

(ii) *Limited permit.* A limited permit shall be issued by an inspector for the interstate movement of untreated articles from Hawaii into the continental United States for treatment in accordance with this section.

(A) To be eligible for a limited permit under this section, untreated litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector.

(B) To be eligible for a limited permit under this section, untreated sweetpotato from Hawaii must be inspected in Hawaii and found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector. In addition, sweetpotato from Hawaii to be treated with irradiation at a dose of 150 Gy must be sampled, cut, and inspected in Hawaii and found free of the ginger weevil (*Elytrotreinus subtruncatus*) by an inspector. 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.

(C) To be eligible for a limited permit under this section, breadfruit and jackfruit from Hawaii must be free of stems and leaves and must originate from an orchard that was previously treated with a fungicide appropriate for the fungus *Phytophthora tropicalis* during the growing season and the fruit must be inspected prior to harvest and found free of the fungus or, after irradiation treatment, must receive a post-harvest fungicidal dip appropriate for *Phytophthora tropicalis*.

(D) To be eligible for a limited permit under this section, fresh pods of cowpea and its relatives from Hawaii must be



free of stems and leaves and must be inspected in Hawaii and found free of the cassava red mite (*Oligonychus biharensis*) and adults and pupae of the order Lepidoptera.

\* \* \* \* \*

## PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

4. The authority citation for part 318 continues to read as follows:

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

### § 318.13–4f [Amended]

5. Section 318.13–4f is amended as follows:

- a. By adding the word “breadfruit,” before the words “Capsicum spp. (peppers)”.
- b. By adding the words “cowpea pods,” before the words “Cucurbita spp. (squash)”.
- c. By adding the word “dragon fruit,” before the word “eggplant”.
- d. By adding the word “jackfruit,” before the word “litchi”.
- e. By adding the words “mangosteen, melon, moringa pods” before the word “papaya”.

Done in Washington, DC, this 8th day of November 2007.

**Kevin Shea,**

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

[FR Doc. E7–22278 Filed 11–14–07; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Chapters I and III

[Docket No. FAA–2007–29291]

#### Review of Existing Regulations

**AGENCY:** Federal Aviation Administration, (FAA), DOT.

**ACTION:** Request for comments.

**SUMMARY:** The FAA requests comments from the public to identify those regulations currently in effect that we should amend, remove, or simplify. We are publishing this notice under our ongoing regulatory review program required by Executive Order 12866. Getting public comments is a necessary element of our effort to make our regulations more effective and less burdensome.

**DATES:** Send us your comments no later than January 14, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA–

2007–29291 using any of the following methods:

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**Privacy:** We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

**Docket:** To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Adrian D. Wright, Office of Rulemaking, ARM–103, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3317; e-mail [adrian.d.wright@faa.gov](mailto:adrian.d.wright@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Congress has authorized the Secretary of Transportation, and by delegation, the Administrator of the Federal Aviation Administration (FAA) to do the following, among other things:

- Develop and maintain a sound regulatory system that is responsive to the needs of the public,

- Regulate air commerce in a way that best promotes safety and fulfills national defense requirements, and
- Oversee, license, and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States.

Anyone interested in further information about FAA’s authority and responsibilities should refer to Title 49 of the United States Code, particularly Subtitle VII, Aviation Programs.

*For many years, the FAA has maintained an active regulatory review program:*

- In 1992, the President announced a regulatory review to “weed out unnecessary and burdensome government regulations, which impose needless costs on consumers and substantially impede economic growth.” In response to a request for public comments published in the **Federal Register** (57 FR 4744, February 7, 1992), the FAA received more than 300 comments.

- In August 1993, the National Commission to Ensure a Strong Competitive Airline Industry (the Commission) recommended the FAA undertake a short-range regulatory review to remove or amend existing regulations to reduce regulatory burdens consistent with safety and security considerations.

- In September 1993, section 5 of Executive Order 12866 (58 FR 51735, October 4, 1993) required each agency to submit a program to the Office of Management and Budget by December 31, 1993, under which the agency will periodically review its existing significant regulations to determine whether any should be changed or removed.

- In January 1994, the FAA published a request for public comments in response to the Commission recommendation and to facilitate the review envisioned by E.O. 12866 (59 FR 1362, January 10, 1994). We received more than 400 comments from 184 commenters.

- In August 1995, the FAA published its proposed plan for periodic regulatory reviews for comment (60 FR 44142, August 24, 1995).

- In October 1996, the FAA adopted its current plan for periodic regulatory reviews based on a three-year cycle (61 FR 53610, October 15, 1996).

- In February 1997, the White House Commission on Aviation Safety and Security recommended the FAA simplify its regulations.

- In May 1997, the FAA published its first request for comments under the three-year review program and in accord