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 Part 318

[Docket No. 97–005–1]

Fruit From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility. Treatment could be conducted either in Hawaii or in non-fruit fly supporting areas of the mainland United States. The fruit would also have to meet certain additional requirements, including packaging requirements. We are also proposing to allow durian to be moved interstate from Hawaii if the durian is inspected and found free of certain plant pests. In addition, we are proposing to allow certain varieties of green bananas to move interstate from Hawaii under certain conditions intended to ensure the bananas' freedom from plant pests, including fruit flies. These actions would relieve restrictions on the movement of these fruits from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

DATES: Consideration will be given only to comments received on or before August 10, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–005–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–005–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Staff Officer, Phytosanitary Issues Management Team (PIMT), PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, (301) 734–6799.

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. Regulation is necessary to prevent the spread of dangerous plant diseases and pests that occur in Hawaii, including the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), the Oriental fruit fly (*Bactrocera dorsalis*), and the Malaysian fruit fly (*Bactrocera latifrons*). These types of fruit flies are collectively referred to in this document as ''fruit flies.''

Abiu, Atemoya, Longan, Rambutan, and Sapodilla

The regulations at § 318.13–4f allow fruits and vegetables listed in § 318.13–4f(a) to be moved interstate from Hawaii if, among other things, the fruits and vegetables undergo irradiation treatment in accordance with that section. Currently, § 318.13–4f(a) lists carambola, litchi, and papaya. We are proposing to allow abiu (*Pouteria caimito*), atemoya (*Annona squamosa* x *A. cherimola*), longan (*Dimocarpus longan*), rambutan (*Nephelium lappaceum*), and sapodilla (*Manilkara sapota*) to be moved interstate from Hawaii in accordance with these same requirements for irradiation. These fruits would be added to the list in § 318.13–4f(a).

Section 318.13–4f provides that:

1. Irradiation treatment must be carried out only in Hawaii or in non-fruit-fly supporting areas of the mainland 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 capable of administering a minimum absorbed ionizing radiation dose of 250 Gray (25 krad), 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 State plant regulatory official;

5. If treated in Hawaii, the fruits and vegetables must be packaged in pest-proof cartons. 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, packing 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 may be packed in either pest-proof or non-pest-proof cartons, but the cartons 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 a minimum absorbed ionizing irradiation dose of 250 Gray (25 krad);

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

9. The absorbed dose must be measured by a dosimeter that can accurately measure an absorbed dose of 250 Gray (25 krad);

10. The number and placement of dosimeters must be in accordance with American Society for 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 at § 318.13–4f. An inspector will issue a limited permit for the interstate movement of untreated fruits and vegetables from Hawaii for irradiation treatment on the mainland United States.

Section 318.37–4f(d) sets forth procedures for applying for approval and inspection of a treatment facility, and procedures for denial and withdrawal of approval.

Section 318.13–4f(e) 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.

In addition, we are proposing to prohibit the movement of treated and untreated longan from Hawaii into Florida. We have determined that irradiation treatment may not affect one of the pests that may be carried by longan. Like litchi, longan is a host of the litchi rust mite (*Eriphyes litchi*), and this pest cannot be easily detected by an inspector. Therefore, the entry of longan from Hawaii into Florida, where most mainland litchi is grown, would be prohibited as a precaution against the possible introduction of litchi rust mite. Accordingly, § 318.13–4f(b)(4)(iii) would be amended to state that cartons in which longan from Hawaii are packed must be stamped ''Not for importation into or distribution in FL.''

We believe that the proposed requirements described above would be sufficient to allow the safe interstate movement of abiu, atemoya, longan, rambutan, and sapodilla from Hawaii to the mainland United States.

Durian

We are also proposing to allow durian (*Dirio zibethinus*) to be moved interstate from Hawaii if it is inspected and found free of plant pests. Durian is not a fruit fly host. The pests associated with durian produced in Hawaii [1] are readily detectable by inspection. Section 318.13–4 provides that fruits and vegetables listed in § 318.13–2(b) of the regulations may be certified for interstate movement from Hawaii when they have been inspected by an inspector and found apparently free from infestation and infection. We would add durian to the list of fruits and vegetables in § 318.13–2(b).

Green Bananas

We are proposing to add a new § 318.13–4i to the regulations to provide for the interstate movement of green bananas (*Musa* spp.) of the cultivars ''Williams,'' ''Valery,'' and dwarf ''Brazilian'' from Hawaii. Ripe, yellow bananas are a host of fruit flies, and may not be moved interstate from Hawaii. However, we have determined that green bananas of the cultivars ''Williams,'' ''Valery,'' and dwarf ''Brazilian'' from Hawaii are only fruit fly hosts if they have any of the following defects: Prematurely ripe fingers, fused fingers, or exposed flesh (not including fresh cuts made during the packing process). Any of the defects listed may attract fruit flies and provide a pathway for infestation. Therefore, we are proposing to allow green bananas of the varieties named above to be moved interstate from Hawaii under the following conditions, which would ensure that the bananas are free from fruit flies and other pests:

1. The bananas must be picked while green and packed for shipment within 24 hours after harvest. If the green bananas will be stored overnight during that 24-hour period, they must be stored in a facility that prevents access by fruit flies;

2. No bananas from bunches containing prematurely ripe fingers (i.e., individual yellow bananas in a cluster of otherwise green bananas) may be harvested or packed for shipment;

3. The bananas must be inspected by an inspector and found free of plant pests as well as any of the following defects: Prematurely ripe fingers, fused fingers, or exposed flesh (not including fresh cuts made during the packing process); and

4. The bananas must be packaged in a pest-proof shipping container or carton.

An inspector would issue a certificate, in accordance with §§ 318.13–3 and 318.13–4, for the interstate movement of green bananas that meet these conditions.

We believe that the conditions described above for the interstate movement of green bananas from Hawaii would provide protection against the spread of injurious plant pests that may be associated with the green bananas to other parts of the United States.

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.

We are proposing to allow abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility. Treatment could be conducted either in Hawaii or in non-fruit fly supporting areas of the mainland United States. The fruit would also have to meet certain additional requirements, including packaging requirements. We are also proposing to allow durian to be moved interstate from Hawaii if the durian is inspected and found free of certain plant pests. In addition, we are proposing to allow certain varieties of green bananas to move interstate from Hawaii under certain conditions intended to ensure the bananas' freedom from plant pests, including fruit flies.

The mainland United States has very limited, if any, quantities of abiu, atemoya, durian, longan, rambutan, and sapodilla for sale to consumers. Three of these specialty fruits—abiu, durian, and rambutan—are not grown commercially on the mainland United States; atemoya, longan, and sapodilla are grown commercially on the mainland United States but only in relatively small quantities. All mainland production of atemoya, longan, and sapodilla occurs in the State of Florida. It is estimated that Florida's annual production of atemoya amounts to approximately 80,000 pounds; of longan, approximately 2 million pounds; of sapodilla, approximately 350,000 pounds.

Unlike the other fruits listed in this document, bananas are generally not considered to be specialty fruits. Also unlike the other fruits, the mainland United States has abundant quantities of bananas, including green bananas, for sale to consumers. However, virtually all bananas sold in the United States are imported. Less than 1 percent of the U.S. supply of bananas is produced domestically, and only a minuscule portion of domestic production occurs on the mainland United States, in Florida and California. In 1992, Florida produced 158,662 pounds of bananas. Production data for California is not available, but production in California is estimated to be much less than in

[1] Information on the pests that may be associated with the interstate movement of durian, green bananas, or any other fruit listed in this document, may be found in the pest risk analyses prepared for this action. Those pest risk analyses may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT** or by calling the Plant Protection and Quarantine (PPQ) fax vault at 301–734–3560.

Florida, given that in 1992 there were only 2 banana-producing farms in California and 67 in Florida. Hawaii accounted for the remainder of domestic banana production in 1992, with a total of 12,570,831 pounds. Based on data for 1992, therefore, Hawaii accounts for nearly all of the banana production in the United States.

It is estimated that there are less than 100 farms growing tropical specialty fruits in Florida, and virtually all of these farms are located in the southern part of the State. Information is not available on the gross receipts for each of these farms, but since the farms are generally less than 5 acres in size, it is reasonable to assume that most are small entities under Small Business Administration (SBA) standards. We do not expect the interstate movement of abiu, atemoya, durian, longan, rambutan, and sapodilla to affect these fruit producers for several reasons. First, as discussed earlier, three of the six specialty fruits are not grown commercially on the mainland United States. Second, the demand for the remaining three specialty fruits that are produced in Florida is strong, particularly among Asian Americans on the mainland United States. Florida currently has no difficulty selling all of the atemoya, longan, and sapodilla that it produces. Third, Hawaiian fruit would likely be marketed primarily in western States on the mainland while Florida's fruits are sold primarily in eastern States. Therefore, Hawaii's specialty fruits would likely be in little direct competition with Florida's specialty fruits.

As discussed above, in 1992, 67 farms in Florida and 2 farms in California produced bananas. Like the specialty fruit growers, most banana-producing farms in Florida and California are assumed to be small entities under SBA standards. However, any interstate movement of green bananas from Hawaii should have little or no impact on banana producers on the mainland United States. This is due to the relatively small volume of bananas that may be moved interstate from Hawaii. Even in the unlikely event that Hawaii moves all of its production interstate, Hawaii's bananas would still account for less than 1 percent of the mainland U.S. supply.

We expect that fruit growers in Hawaii would benefit from the interstate movement of abiu, atemoya, durian, green bananas, longan, rambutan, and sapodilla from Hawaii because these growers would have new outlets for their products. In 1995, the State of Hawaii produced 1,250,800 pounds of specialty tropical fruit (of all varieties) with a value of $987,100. Three varieties of fruit—carambola, litchi, and specialty pineapple—accounted for 74 percent of Hawaii's 1995 production. The remaining 26 percent, or approximately 325,000 pounds of fruit, consisted of all other varieties of fruit grown in Hawaii, including the six specialty fruits named in this document. Also, in 1992, Hawaii produced 12,570,831 pounds of bananas, with a value of $5.2 million.

In 1995, 115 farms in the State of Hawaii grew at least one variety of specialty tropical fruit. However, information on which of those farms grew one or more of the six specialty fruits named in this document is not available. Information is also not available on the gross receipts for each of the 115 farms. In all likelihood, most of the 115 farms are small entities because data for all 2,019 Hawaiian farms whose revenues are derived primarily from the sales of fruit and/or tree nuts show that 99 percent are small entities under SBA standards.

The production of tropical specialty fruit is growing rapidly in Hawaii. The State's 1995 production level represents an increase of approximately 126 percent, or 698,100 pounds, over the 1994 level of 552,700 pounds. Carambola and specialty pineapple accounted for more than 80 percent of the increase. The increase in production of tropical specialty fruit is expected to continue, as a response to the decline in the sugar industry and to the recent availability of prime agricultural lands in the State of Hawaii. In 1995, Hawaiian growers devoted 415 acres to tropical specialty fruits, 6 percent more acreage than in 1994. It is estimated that by the year 2000, Hawaii will be producing 2.6 million pounds of tropical specialty fruits annually, more than double the 1995 level. If Hawaiian growers move 200,000 pounds of each of the six specialty fruits named in this document interstate annually, using the 1995 average per pound value of all tropical specialty fruits produced in Hawaii (on all 115 farms) of $.79, the collective annual sales of the fruit would generate $948,000. This amounts to $8,243 per farm when divided equally among the 115 farms growing specialty tropical fruit.

In 1992, bananas were produced on 700 farms in Hawaii, and a total of 1,506 acres were devoted to banana production on those farms. Although data for individual farms in Hawaii that produce bananas is not available, most are probably small entities by SBA standards because, as mentioned earlier, data for all 2,019 Hawaiian farms whose revenues are derived primarily from the sales of fruit and/or tree nuts show that 99 percent are small entities under SBA standards. However, if the proposal is adopted, it would not have a significant impact on Hawaiian banana producers. Even if those producers were to move interstate the equivalent of half of the 1992 banana production (6.3 million pounds), the combined revenues from such sales would amount to $2.6 million dollars, an average of only $3,681 per farm.

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. 97–005–1. Please send a copy of your comments to: (1) Docket No. 97–005–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. Comments on the information collection or recordkeeping requirements included in this proposed rule are due 60 days from the proposed rule's date of publication in the **Federal Register**. 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 allow abiu, atemoya, longan, rambutan, and sapodilla to move interstate from Hawaii to the mainland United States if, among other things, the fruit undergoes irradiation treatment in Hawaii or in a non-fruit fly supporting area of the mainland United States. In addition, we are proposing to allow durian and green bananas to move interstate from Hawaii under certain conditions. In order for these fruits to move interstate to the mainland United States, we would have to issue certificates and limited permits, and we would have to mark and seal shipping containers. These information collection activities would help ensure that only those fruits that have been handled in compliance with the regulations move interstate to the mainland United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to 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 .2550 hours per response.

Respondents: Importers, exporters, shippers, and irradiation facility operators.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 255.2.

Estimated annual number of responses: 2,552.

Estimated total annual burden on respondents: 651 hours.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, Room 404–W, 14th Street and Independence Ave., SW, Washington, DC 20250.

List of Subjects in 7 CFR Part 318

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

Accordingly, 7 CFR part 318 would be amended as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 318.13–2 [Amended]

2. In § 318.13–2, paragraph (b), the list of fruits and vegetables would be amended by adding, in alphabetical order, ''Durian (*Dirio zibethinus*).''

3. In § 318.13–4f, paragraphs (a) and (b)(4)(iii) would be revised to read as follows:

§ 318.13–4f Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii.

(a) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the following fruits and vegetables: Abiu, atemoya, carambola, litchi, longan, papaya, rambutan, and sapodilla.

(b) * * *

(4) * * *

(iii) Litchi and longan from Hawaii may not be moved interstate into Florida. All cartons in which litchi or longan are packed must be stamped ''Not for importation into or distribution in FL.''

* * * * *

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

§ 318.13–4i Administrative instructions; conditions governing the movement of green bananas from Hawaii.

Green bananas (*Musa spp.*) of the cultivars ''Williams,'' ''Valery,'' and dwarf ''Brazilian'' may be moved interstate from Hawaii with a certificate issued in accordance with §§ 318.13–3 and 318.13–4 of this subpart if the bananas meet the following conditions:

(a) The bananas must be picked while green and packed for shipment within 24 hours after harvest. If the green bananas will be stored overnight during that 24-hour period, they must be stored in a facility that prevents access by fruit flies;

(b) No bananas from bunches containing prematurely ripe fingers (i.e., individual yellow bananas in a cluster of otherwise green bananas) may be harvested or packed for shipment;

(c) The bananas must be inspected by an inspector and found free of plant pests as well as any of the following defects: prematurely ripe fingers, fused fingers, or exposed flesh (not including fresh cuts made during the packing process); and

(d) The bananas must be packaged for interstate movement in a pest-proof shipping container or carton.

Done in Washington, DC, this 4th day of June 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–15403 Filed 6–9–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Austin-Bergstrom International Airport Class C Airspace Area; Revocation of the Austin-Bergstrom International Airport Class D Airspace Area; and Revocation of the Robert Mueller Municipal Airport Class C Airspace Area, TX; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Informal airspace meetings.

SUMMARY: This document announces three fact-finding informal airspace meetings. The purpose of these meetings is to provide interested parties the opportunity to present views, recommendations, and comments on the proposal to establish a Class C airspace area for the Austin-Bergstrom International Airport; revoke the Austin-Bergstrom International Airport Class D airspace area; and revoke the Robert Mueller Municipal Airport Class C airspace area, TX.

DATES: The informal airspace meetings will be held on Tuesday, August 11, Wednesday, August 12, and Thursday, August 13, 1998, starting at 7:30 p.m. Comments must be received on or before October 1, 1998.

ADDRESSES: *Meetings:* On August 11, 1998, the meeting will be at the Georgetown Community Center, San Gabriel Park, Georgetown, TX. On August 12, 1998, the meeting will be at the New Airport Project Team Auditorium, 2716 Terminal Drive, Austin-