

# 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–2006–0027]

RIN 0579–AC15

#### Interstate Movement of Fruits and Vegetables From Hawaii

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to remove vapor heat treatment as an approved treatment for bell pepper, eggplant, Italian squash, and tomato moved interstate from Hawaii. This action is necessary because these four commodities can serve as hosts for the solanum fruit fly, which has been detected in Hawaii. Vapor heat treatment is not an approved treatment for that pest. We are also proposing to provide for the use of irradiation as an approved treatment for all *Capsicum* spp. (peppers) and *Curcubita* spp. (squash) moved interstate from Hawaii. This action would relieve unnecessary restrictions on the interstate movement of peppers and squash and allow a greater variety of *Capsicum* spp. and *Curcubita* spp. to be moved interstate from Hawaii.

**DATES:** We will consider all comments that we receive on or before December 11, 2006.

**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–2006–0027 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–2006–0027, 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–2006–0027.

**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, 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. Regulation is necessary to prevent the spread of dangerous plant diseases and pests that occur in Hawaii. Some fruits and vegetables regulated under the Hawaiian fruits and vegetables regulations are allowed to move interstate if they are treated with an approved treatment for certain plant pests. Lists of approved treatments for these fruits and vegetables and requirements for conducting these treatments are contained in 7 CFR part 305.

Four of the fruits and vegetables that are allowed to move interstate from Hawaii if treated with an approved treatment are bell pepper, eggplant, Italian squash, and tomato. The

treatments approved for these commodities, as listed in the table in § 305.2(h)(2)(ii), include the vapor heat treatments numbered VH T106–b–1 (for bell peppers), VH T106–b–2 (for eggplant), VH T106–b–5 and VH T106–b–7 (for tomato), and VH T106–b–6 (for Italian squash). Despite their differing numbers, these treatment numbers all refer to the same treatment schedule, which is described in § 305.24(c). These commodities may also be treated with irradiation in accordance with § 305.34, which sets out requirements for the use of irradiation as a treatment for fruits and vegetables moved interstate from Hawaii. Both the vapor heat treatment and the irradiation treatment are approved to neutralize the Mediterranean fruit fly (*Ceratitis capitata*), the Oriental fruit fly (*Bactrocera dorsalis*), and the melon fruit fly (*Bactrocera curcurbitae*). These fruit flies are present in Hawaii, and these four commodities can serve as hosts for them.

An additional species of fruit fly has been detected in Hawaii, the solanum fruit fly (*Bactrocera latifrons*).<sup>1</sup> Bell peppers, eggplant, Italian squash, and tomatoes can all serve as hosts for this fruit fly. Because limited research has been done regarding the effectiveness of the vapor heat treatment schedule described in § 305.24(c) at neutralizing solanum fruit fly, this treatment is not approved to treat for solanum fruit fly. Therefore, we are proposing to remove vapor heat treatment as an approved treatment for bell pepper, eggplant, tomato, and Italian squash. We would accomplish this by removing the respective vapor heat treatment numbers for these commodities from their entries in § 305.2(h)(2)(ii).

We have also determined that the four fruit flies named above—the Mediterranean fruit fly, the Oriental fruit fly, the melon fruit fly, and the solanum fruit fly—are the only pests for which treatment should be required for the interstate movement of all species of the genus *Capsicum* (peppers), not just the bell pepper, and all species of the genus *Curcubita* (squash), not just the Italian squash. Like the Mediterranean

<sup>1</sup> See Liquido NJ, Harris EJ, and Dekker LA. “Ecology of *Bactrocera latifrons* (Diptera: Tephritidae) Populations: Host Plants, Natural Enemies, Distribution, and Abundance,” *Annals of the Entomological Society of America*, 87(1):71–85, 1994.

fruit fly, the Oriental fruit fly, and the melon fruit fly, the solanum fruit fly is a member of the family Tephritidae. We have previously determined that an irradiation dose of 150 gray is sufficient to neutralize all fruit flies of the family Tephritidae. (For more information on this determination, see the final rule published in the **Federal Register** on January 27, 2006 [Docket No. 03-077-2, 71 FR 4451-4464].)

Therefore, we are proposing to add irradiation as an approved treatment for *Capsicum* spp. and *Curcurbita* spp. moved interstate from Hawaii. To accomplish this change, we would make the following amendments in 7 CFR parts 305 and 318:

- In paragraph (b) of § 318.13-4b, we would add “*Capsicum* spp. (peppers)” and “*Curcurbita* spp. (squash)” to the list of commodities that are eligible for interstate movement from Hawaii if, prior to interstate movement, they are inspected for plant pests by an inspector and are then treated for plant pests under the supervision of an inspector in accordance with a treatment prescribed in 7 CFR part 305.

- In § 318.13-4f, which lists fruits and vegetables from Hawaii for which irradiation in accordance with § 305.34 is an approved treatment, we would add “*Capsicum* spp. (peppers)” and “*Curcurbita* spp. (squash)” to that list.

- In § 305.34(a)(1), in the table that lists fruits and vegetables from Hawaii for which irradiation is an approved treatment and the irradiation dose that is approved for each commodity, we would add entries for “*Capsicum* spp. (peppers)” and “*Curcurbita* spp. (squash)” and indicate that a dose of 150 gray is approved for their treatment.

- In § 305.2(h)(2)(ii), we would add entries in the table for “*Capsicum* spp. (peppers)” and “*Curcurbita* spp. (squash).” These entries would list irradiation as an approved treatment for commodities of these genera. They would also indicate that irradiation would be approved to treat all fruit flies of the family Tephritidae that are associated with these commodities. Indicating that the treatment is approved for all fruit flies of the family Tephritidae would mean that we would not have to update the regulations in the event that we discover that another fruit fly of that family is associated with one of these genera.

In each of these locations, we would remove the separate entries for “bell pepper” and “Italian squash.”

Irradiation is already an approved treatment for eggplant and tomato in § 305.2(h)(2)(ii). We would update the entries for these commodities in § 305.2(h)(2)(ii) by indicating that

irradiation would be approved to treat all fruit flies of the family Tephritidae associated with these commodities.

#### 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 is in response to a species of fruit fly that has been detected in Hawaii, the solanum fruit fly (*Bactrocera latifrons*). Bell peppers, eggplant, Italian squash, and tomatoes are the four commodities for which vapor heat treatment is an approved treatment that are affected by the solanum fruit fly. Because limited research has been done regarding the effectiveness of vapor heat treatment at neutralizing solanum fruit fly, APHIS is proposing to remove vapor heat treatment from the list of approved treatments for bell peppers, eggplant, Italian squash, and tomatoes moved interstate from Hawaii.

While vapor heat treatment would no longer be an approved treatment, irradiation is an approved treatment for the interstate movement of bell peppers and Italian squash from Hawaii. We are proposing to amend the regulations to approve irradiation as a treatment for all species of the genus *Capsicum* (peppers), not just bell peppers, and all species of the genus *Curcurbita* (squash), not just the Italian squash. APHIS has previously determined that an irradiation dose of 150 gray is sufficient to neutralize all fruit flies that affect *Capsicum* spp. and *Curcurbita* spp. in Hawaii, including the solanum fruit fly.

Approximately \$15.4 million worth of eggplant, green peppers, Italian squash, Oriental squash, and tomatoes were produced in the State of Hawaii in 2004, amounting to 52 million pounds (table 1). However, none of the eggplant, green peppers, Italian squash, or tomatoes produced in Hawaii in 2004 was moved interstate to the U.S. mainland. According to the Hawaii Department of Agriculture, none of these commodities has been moved interstate from Hawaii to the U.S. mainland within the last 2 years.

TABLE 1.—PRODUCTION AND VALUE OF HAWAIIAN EGGPLANT, PEPPERS, SQUASH, AND TOMATOES, 2004

Commodity	Quantity (lb)	Value
Eggplant .....	1,050,000	\$809,000
Peppers (Green)	3,200,000	2,208,000
Squash (Italian, Oriental) .....	2,350,000	1,263,000
Tomatoes .....	16,800,000	11,088,000
Total .....	52,200,000	15,368,000

Source: USDA, Hawaii Agricultural Statistics, 2006.

The proposed rule would continue to give Hawaiian entities the opportunity to move *Capsicum* spp. and *Curcurbita* spp. interstate. While vapor heat treatment would no longer be an approved treatment for bell peppers and Italian squash, irradiation would become an approved treatment for all *Capsicum* spp. and *Curcurbita* spp. Irradiation would continue to be an approved treatment for eggplant and tomatoes as well.

Accordingly, we do not expect that this rule would have a significant economic impact on a substantial number of small entities. This proposed rule is necessary to safeguard the U.S. mainland from the introduction of solanum fruit fly (*Bactrocera latifrons*). Because in recent years eggplant, peppers, squash, and tomatoes have not been moved interstate from Hawaii, the rule is not expected to have a significant impact on small or large entities.

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

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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.

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 would continue to read as follows:

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

2. In § 305.2, in the table in paragraph (h)(2)(ii), the entry for Hawaii would be amended as follows:

a. By removing the entries for “Bell pepper” and “Squash, Italian”.

b. By adding, in alphabetical order, entries for “Capsicum spp. (peppers)” and “Curcubita spp. (squash)” to read as set forth below.

c. By revising the entries for “Eggplant” and “Tomato” to read as set forth below.

§ 305.2 Approved treatments.

- \* \* \* \* \*
(h) \* \* \*
(2) \* \* \*
(ii) \* \* \*

Table with 4 columns: Location, Commodity, Pest, Treatment schedule. Rows include Hawaii, Capsicum spp. (peppers), Curcubita spp. (squash), Eggplant, and Tomato with associated pest names like Tephritidae and Ceratitis capitata.

3. In § 305.34, in paragraph (a)(1), the table would be amended as follows:

- a. By removing the entries for “Bell pepper” and “Italian squash”.
b. By adding, in alphabetical order, entries for “Capsicum spp. (peppers)” and “Curcubita spp. (squash)” to read as set forth below.

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

- (a) \* \* \*
(1) \* \* \*

IRRADIATION FOR PLANT PESTS IN HAWAIIAN FRUITS AND VEGETABLES

Table with 2 columns: Commodity, Dose (gray). Rows include Capsicum spp. (peppers) with dose 150 and Curcubita spp. (squash) with dose 50.

\* \* \* \* \*

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

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

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

§ 318.13–4b [Amended]

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

- a. By removing the words “bell peppers” and adding the words “Capsicum spp. (peppers)” in their place.
b. By adding the words “Curcubita spp. (squash),” after the word “carambolas,”.
c. By removing the words “Italian squash,”.

§ 318.13–4f [Amended]

6. Section 318.13–4f would be amended as follows:

- a. By removing the words “bell pepper” and adding the words “Capsicum spp. (peppers)” in their place.
b. By adding the words “Curcubita spp. (squash),” after the word “carambola,”.

c. By removing the words “Italian squash,”.

Done in Washington, DC, this 4th day of October 2006.

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service. [FR Doc. E6–16754 Filed 10–10–06; 8:45 am] BILLING CODE 3410–34-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–148576–05]

RIN 1545–BF69

User Fees for Processing Installment Agreements; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 300 of the Internal