DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301, 305, 318, 319, 330, and 352

[Docket No. APHIS–2008–0022]

RIN 0579–AC94

Phytosanitary Treatments; Location of and Process for Updating Treatment Schedules

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the phytosanitary treatment regulations in 7 CFR part 305 by removing the lists of approved treatments and treatment schedules from the regulations, while retaining the general requirements for performing treatments and certifying or approving treatment facilities. We would remove treatment schedules from other places where they are currently found in 7 CFR chapter III as well. Approved treatment schedules would instead be found in the Plant Protection and Quarantine Treatment Manual, which is available on the Internet. We are also proposing to establish a new process to provide the public with notice and the opportunity to comment on changes to treatment schedules. Finally, we would harmonize and combine the requirements for performing irradiation treatment for imported articles, articles moved interstate from Hawaii and U.S. territories, and articles moved interstate from an area quarantined for fruit flies. These changes would simplify and expedite our processes for adding, changing, and removing treatment schedules while continuing to provide for public participation in the process. These changes would also simplify our presentation of treatments to the public by consolidating all treatments into one document and eliminating redundant text from the regulations.

DATES: We will consider all comments that we receive on or before July 13, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0022* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0022, 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–2008–0022.

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: Dr. Inder P. S. Gadh, Senior Risk Manager–Treatments, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR chapter III are intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. Under the regulations, certain plants, fruits, vegetables, and other articles must be treated before they may be moved into the United States or interstate. The phytosanitary treatments regulations contained in part 305 of 7 CFR chapter III (referred to below as the regulations) set out standards and schedules for treatments required in parts 301, 318, and 319 of 7 CFR chapter III for fruits, vegetables, and other articles.

Broadly speaking, the regulations in part 305 contain four types of provisions:

- General requirements to follow approved treatment schedules and provisions for monitoring and certifying treatments.
- Lists of approved treatments for fruits, vegetables, and other articles. These are currently contained in § 305.2. Entries in the lists of approved treatments include the article in question, the pests of concern, and the treatment approved to neutralize those pests for that article. For fruits and vegetables, whose approved treatments are listed in paragraph (h) of § 305.2, entries in the lists also include the country or area of origin of the fruit or vegetable for which treatment is approved.
- General requirements for each type of treatment (chemical treatment, heat treatment, cold treatment, etc.). These include requirements for treatment facility construction, certifying or approving treatment facilities, and performing and monitoring treatments. These requirements are contained at the beginning of treatment-specific subparts. For example, ''Subpart—Chemical Treatments'' begins with a section (§ 305.5) that sets out requirements for facilities performing chemical treatments, general chemical treatment procedures, and requirements for monitoring chemical treatments.
- Treatment schedules. For example, in ''Subpart—Chemical Treatments,'' § 305.6 contains various methyl bromide fumigation treatment schedules, which set out the required pressure, temperature, dosage rate, and exposure period for each schedule. Some treatment schedules are also found elsewhere in 7 CFR chapter III. For example, some treatment schedules for logs, lumber, and other unmanufactured wood articles are contained in § 319.40–7.

Most of the phytosanitary treatments authorized by the Animal and Plant Health Inspection Service (APHIS) and listed in part 305 are also contained in the Plant Protection and Quarantine (PPQ) Treatment Manual. Among other things, the PPQ Treatment Manual contains approximately 400 treatment schedules, detailed instructions for administering the treatments, and requirements for certification of facilities that administer the treatments. The PPQ Treatment Manual may be found on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatment.shtml.*

We are proposing to remove the lists of authorized treatments and treatment schedules from the regulations, while retaining the general requirements for performing treatments and certifying or approving treatment facilities. We would remove treatment schedules from other places where they are currently found in parts 301 and 319 as well. Treatment schedules in those parts that are not currently found in the PPQ Treatment Manual would be added to it, and the PPQ Treatment Manual would serve as the official reference for all approved treatment schedules. The inclusion of a treatment schedule in the PPQ Treatment Manual would indicate that the treatment was approved, making the inclusion of separate lists of approved treatments in the regulations unnecessary.

The general requirements to follow approved treatment schedules and the specific provisions for monitoring and certification would be retained in the regulations. The regulations would refer the reader to the PPQ Treatment Manual as the source for approved treatment schedules. We would also retain the general requirements for each type of treatment in part 305.

We are also proposing to establish a new process to make changes to the lists of approved treatments and the treatment schedules that would be contained in the Treatment Manual. Rather than making changes through the rulemaking process, as is necessary for treatments listed in the regulations, we would publish notices in the **Federal Register** to inform the public of the change we are proposing and to solicit comments. Following the close of the comment period, we would also publish notices to inform the public of our decision.

The regulations in § 319.56–4(c)(2) set out a process by which APHIS can authorize the importation of fruits and vegetables through the publication of notices in the **Federal Register.** This process can be used if a pest risk analysis is completed and APHIS makes the determination that the application of one or more of the designated phytosanitary measures listed in paragraph (b) of § 319.56–4 is sufficient to mitigate the risk that plant pests or noxious weeds could be introduced into or disseminated within the United States via the imported fruits or vegetables. One of the measures listed in paragraph (b) is treatment in accordance with part 305. Imports are authorized through this process by announcing, through the publication of a notice in the **Federal Register,** the availability of the pest risk analysis and the Administrator's determination that the application of one or more of the designated measures is sufficient to address the risk. A subsequent notice may then be issued to announce our intent to issue a permit to authorize importation of the commodity.

However, the current structure of part 305 often makes it impossible to use the notice-based process for authorizing the importation of fruits and vegetables in § 319.56–4 if one of the designated measures to address pest risk is a phytosanitary treatment. As noted earlier, in the lists of authorized treatments for imported fruits and vegetables in § 305.2(h)(2)(i), fruits and vegetables are listed by their country of origin. This is inappropriate because the country of origin of a fruit or vegetable does not necessarily affect the efficacy of a treatment at neutralizing the pest associated with that fruit or vegetable. For example, we would expect the cold treatment schedule CT T107–a to be effective at neutralizing the Mediterranean fruit fly (*Ceratitis capitata*) in grapes from any country, and it is currently listed as an approved treatment for that pest for grapes from several countries. The PPQ Treatment Manual recognizes this principle; it does not typically include countries in its lists of commodities, pests, and approved treatments.[1] As part of this proposed action, we would also remove any specific country designations on treatments in the PPQ Treatment Manual, except when country-specific circumstances or lack of data on a treatment's efficacy have led us to approve a treatment only for a specific country-commodity-pest combination.

Currently, to approve the use of a treatment for a fruit or vegetable from a new country that is affected by a pest for which there is an approved treatment, we must amend the regulations in part 305. To authorize the importation of grapes from a new country subject to treatment with CT T107–a for Mediterranean fruit fly, we would need to undertake rulemaking to add the new country to the list in § 305.2(h)(2)(i) as a country from which grapes may be treated with CT T107–a, even though we could otherwise authorize the importation of those grapes through the notice-based process in § 319.56–4.

Similarly, countries requesting that we allow the importation of a commodity sometimes provide efficacy data on treatments for pests prevalent in that country. Reviewing this information often allows us to develop a treatment schedule to neutralize those pests. For example, Australia could submit data on the efficacy of cold treatment for fruit flies in strawberries, a commodity for which we currently have no approved treatment schedules, as part of a request that we approve the importation of strawberries from Australia. If treatment was one of the phytosanitary measures we determined to be necessary to mitigate the risk associated with strawberries from Australia, strawberries from Australia would not be eligible for the notice-based process in § 319.56–4 until the new treatment schedule was added through rulemaking. We currently have no means to add a new approved treatment schedule except through the rulemaking process.

In both of the cases described above, establishing a notice-based process to amend the lists of approved treatments and treatment schedules would enable additional use of the streamlined process in § 319.56–4 to authorize the importation of fruits and vegetables. As APHIS pursues the use of streamlined processes for approving the movement of other commodities in the future, we expect that we would need to approve new treatments.

In this proposal, we would also establish a process by which we could make immediate changes to the lists of approved treatments and to the treatment schedules, also through publishing notices in the **Federal Register.** We would only use the process for making immediate changes in certain circumstances, which would be listed in the regulations.

When we discover pests that have not been neutralized after an article has been treated for those pests, we may make immediate changes to the relevant treatment schedule to ensure its continued effectiveness (unless we determine that the treatment has not been correctly applied, in which case we take other actions). We may also need to remove a treatment schedule if it cannot be adjusted to make it effective, and in some cases we may need to add a new one in its place to allow trade in a commodity to continue. In addition, treatment schedules developed for certain conditions may become difficult to administer if those circumstances change; there may be a simple adjustment that can be made to the treatment schedule that will ensure that it can still be administered, without affecting its efficacy. Finally, the use of certain treatments, particularly chemical treatments, is dependent on the authorization of other Federal agencies, and we may need to withdraw certain treatment schedules immediately if those treatments are no longer authorized.

The Plant Protection Act (7 U.S.C. 7701 *et seq.*) provides APHIS with the necessary statutory authority to take some of these actions immediately, and we will do so whenever necessary to ensure that treatments are effective at neutralizing plant pests. In addition, we would not allow treatments to be performed if another Federal agency does not permit them to be performed; the chemical treatment regulations in current § 305.5(c)(1) make this clear by stating that if the U.S. Environmental Protection Agency (EPA) cancels approval for the use of a pesticide on a commodity, then the treatment schedule

[1] PPQ maintains a separate database, the Fruits and Vegetables Import Requirements database, that provides information about countries from which the importation of fruits and vegetables is approved and, among other things, any treatments that may be required. This database is available at *http://www.aphis.usda.gov/import_export/plants/plant_imports/quarantine_56/favir.shtml.*

prescribed in the PPQ Treatment Manual is no longer authorized for that commodity. Having a notice-based process in place for making immediate changes to the lists of approved treatments or to the treatment schedules would ensure that the PPQ Treatment Manual contains only approved treatment schedules, ensure that our decisionmaking processes are transparent, and give the public an opportunity to provide input on changes to the PPQ Treatment Manual.

In addition to approved treatment schedules, the PPQ Treatment Manual contains other information, such as the procedures for performing certain types of treatments (e.g., fumigation under a tarpaulin). Under this proposal, only the approved treatment schedules in the PPQ Treatment Manual, including information such as the temperature, duration, dose, or end point of the treatment, would need to be amended using the notice-based process described in this proposal. Other information in the PPQ Treatment Manual, such as the detailed information on treatment preparation, administering treatments, facility construction, and compliance with other applicable Federal regulations, would be amended without requesting comment from the public, as is the case now.

Changes to 7 CFR Part 305

Much of part 305 would be removed under this proposal. We are providing a distribution table and a derivation table below to give the reader an overview of the changes we are proposing. Those changes are discussed in detail directly after the tables.

TABLE 1—DISTRIBUTION OF CURRENT 7 CFR PART 305

Current section	Section title (subject)	New location	Comments
305.1	Definitions	305.1	Changes made to section to reflect removal of schedules, references to PPQ Treatment Manual.
305.2	Approved treatments	Paragraph (a) remains in 305.2; rest added to PPQ Treatment Manual.	Some changes.
305.3	Monitoring and certification of treatments.	305.4	Some changes.
305.5	Treatment requirements (chemical treatments).	305.5	Updates to refer to PPQ Treatment Manual.
305.6	Methyl bromide fumigation treatment schedules.	PPQ Treatment Manual.	
305.7	Phosphine treatment schedules	PPQ Treatment Manual.	
305.8	Sulfuryl fluoride treatment schedules	PPQ Treatment Manual.	
305.9	Aerosol spray for aircraft treatment schedules.	PPQ Treatment Manual.	
305.10	Treatment schedules for combination treatments.	PPQ Treatment Manual.	
305.11	Miscellaneous chemical treatments	PPQ Treatment Manual.	
305.15	Treatment requirements (cold treatment).	305.6	Updates to refer to PPQ Treatment Manual.
305.16	Cold treatment schedules	PPQ Treatment Manual.	
305.17	Authorized treatments; exceptions (quick freeze).	305.7	No longer lists approved treatments.
305.18	Quick freeze treatment schedule	PPQ Treatment Manual.	
305.20	Treatment requirements (heat treatment).	305.8	Updates to refer to PPQ Treatment Manual.
305.21	Hot water dip treatment schedule for mangoes.	PPQ Treatment Manual.	
305.22	Hot water immersion treatment schedules.	PPQ Treatment Manual.	
305.23	Steam sterilization treatment schedules	PPQ Treatment Manual.	
305.24	Vapor heat treatment schedules	PPQ Treatment Manual.	
305.25	Dry heat treatment schedules	PPQ Treatment Manual.	
305.26	Khapra beetle treatment schedule for feeds and milled products.	PPQ Treatment Manual.	
305.27	Forced hot air treatment schedules	PPQ Treatment Manual.	
305.28	Kiln sterilization treatment schedule	PPQ Treatment Manual.	
305.29	Vacuum heat treatment schedule	PPQ Treatment Manual.	
305.31	Irradiation treatment of imported regulated articles for certain plant pests.	305.9.	§§ 305.31, 305.32, and 305.34 would be combined and harmonized.
305.32	Irradiation treatment of regulated articles to be moved interstate from areas quarantined for fruit fly.	305.9..	
305.34	Irradiation treatment of certain regulated articles from Hawaii, Puerto Rico, and the U.S. Virgin Islands.	305.9..	
305.40	Garbage treatment schedules for insect pests and pathogens.	PPQ Treatment Manual.	
305.42	Miscellaneous treatment schedules	PPQ Treatment Manual.	

TABLE 2—DERIVATION OF PROPOSED 7 CFR PART 305

Section	Title	Derivation
305.1	Definitions	Current § 305.1.
305.2	Approved treatments	Current § 305.2(a).
305.3	Process for adding, revising, or removing treatment schedules	New language.
305.4	Monitoring and certification of treatments	Current § 305.3.
305.5	Chemical treatment requirements	Current § 305.5.
305.6	Cold treatment requirements	Current § 305.15.
305.7	Quick freeze treatment requirements	Current § 305.17.
305.8	Heat treatment requirements	Current § 305.20.
305.9	Irradiation treatment requirements	Current §§ 305.31, 305.32, and 305.34.

Definitions (§ 305.1)

We would remove the definitions of the following terms, as these terms are only referred to in the treatment schedules in 7 CFR part 305: *autoclaving, forced hot air, hitchhiker pest, hot water immersion dip, phosphine, steam heat, vacuum heat treatment,* and *vapor heat.* Because we are removing the treatment schedules that include these terms from the regulations, these definitions would not need to be included in § 305.1.

We are proposing to add three new definitions.

The term *neutralize* would be defined as, in the case of treatments other than irradiation, to kill a plant pest; in the case of irradiation, to prevent the establishment of the pest by killing it, sterilizing it, or preventing its development from an immature stage into an adult capable of emerging from its host, reproducing, or becoming established.

As stated in the proposed definition of *neutralize,* an effective irradiation treatment does not necessarily kill a plant pest; rather, it may render the plant pest incapable of causing an infestation, by sterilizing it or preventing its maturation. This definition would help to clarify that point.

The current definition of *irradiation* reads: ''The use of irradiated energy to kill or devitalize organisms.'' To refer to the new definition, we would replace the word ''devitalize'' with the word ''neutralize.'' In addition, we would correct an error in the definition by referring to ionized energy rather than irradiated energy.

Plant Protection and Quarantine (PPQ) would be defined as the Plant Protection and Quarantine program of APHIS.

PPQ Treatment Manual would be defined as the document that contains the treatment schedules that are approved for use under 7 CFR part 305. The definition would also state that the Treatment Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/index.shtml* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

Approved Treatments (§ 305.2)

Most of proposed § 305.2 would be drawn from current paragraph (a) of § 305.2, with modifications to reflect the relocation of the lists of approved treatments and the treatment schedules to the Treatment Manual. Paragraphs (b) through (v) of current § 305.2 contain lists of approved treatments for various articles and would thus be removed.

Proposed paragraph (a) of § 305.2 would state that certain commodities or articles require treatment, or are subject to treatment, prior to the interstate movement within the United States or importation or entry into the United States. It would also state that treatment is required as indicated in parts 301, 318, and 319 of this chapter, on a permit, or by an inspector.

Proposed paragraph (b) would indicate that lists of approved treatments and approved treatment schedules are set out in the PPQ Treatment Manual. It would also require treatments to be administered in accordance with the treatment requirements that we would retain in part 305 and in accordance with treatment schedules found in the PPQ Treatment Manual.

Proposed paragraph (c), which would be retained unchanged from current paragraph (a)(4), would indicate that APHIS is not responsible for losses or damages incurred during treatment and would recommend that a sample be treated first before deciding whether to treat the entire shipment.

Proposed New Process for Adding, Revising, or Removing Treatment Schedules (§ 305.3)

Proposed § 305.3 would set out the notice-based processes we are proposing to use to amend the Treatment Manual. There would be two processes: A normal process and a process for taking immediate action.

Paragraph (a) of proposed § 305.3 would describe the normal process. Under this process, APHIS would publish in the **Federal Register** a notice describing the reasons we have determined that it is necessary to add, revise, or remove a treatment schedule and, if necessary, making available the new or revised treatment schedule as it would be added to the PPQ Treatment Manual. In our notice, we would provide for a public comment period on the new or revised treatment schedule or on the removal of the treatment schedule from the PPQ Treatment Manual.

If we have prepared documentation to support the proposed change, we would also announce its availability via this notice. We anticipate preparing supporting documentation for most changes to the Treatment Manual, to indicate what data led us to propose the change in question. However, some changes would not require such data, such as a change to clarify a requirement or a change to remove a schedule whose use is not authorized by another Federal agency.

After the close of the public comment period, we would issue a notice indicating that the treatment schedule specified in the initial notice would be added to the PPQ Treatment Manual, revised as described in the notice, or removed from the PPQ Treatment Manual if:

- No comments were received on the notice;
- The comments on the notice supported our action; or
- The comments on the notice were evaluated but did not change our determination that it was necessary to add, revise, or remove the treatment schedule, as described in the notice.

If the final notice indicated that we were making the change described in the initial notice, we would also make available, at the Web address referred to earlier, an updated version of the

Treatment Manual that would reflect the addition, revision, or removal of the particular treatment schedule.

If comments presented information that caused us to determine that the change described in the notice was not appropriate, APHIS would issue a notice informing the public of this determination after the close of the comment period.

While we anticipate the process in proposed paragraph (a) to be suitable for many changes to the PPQ Treatment Manual, certain circumstances require that treatment schedules be added, revised, or removed immediately. Paragraph (b) of proposed § 305.3 would set out those circumstances and describe a process for making immediate changes to the Treatment Manual.

Paragraph (b)(1) of proposed § 305.3 would describe the circumstances in which the immediate process could be used. Under this paragraph, treatment schedules could be immediately added to the PPQ Treatment Manual, revised, or removed from the PPQ Treatment Manual if any of the following circumstances applied:

- PPQ has determined that an approved treatment schedule is ineffective at neutralizing the targeted plant pest(s). For example, when we find live pests when inspecting treated articles, we may adjust treatment schedules to ensure that treatment is effective.
- PPQ has determined that, in order to neutralize the targeted plant pest(s), the treatment schedule must be administered using a different process than was previously used. Some treatment schedules contain specific instructions for their use. Upon finding live pests when inspecting treated articles, we may determine that the treatment must be administered differently, or that we must set out more specific conditions for the administration of the treatment. For example, we may determine that methyl bromide fumigation without a tarpaulin covering the treated commodity is not effective but that the same schedule employed with a tarpaulin will be effective.
- PPQ has determined that a new treatment schedule is effective, based on efficacy data, and that ongoing trade in a commodity or commodities may be adversely impacted unless the new treatment schedule is approved for use. For example, if a facility used to perform chemical treatment on a commodity suddenly becomes unavailable to producers in a foreign country, but a facility is available to perform cold treatment on the commodity using a schedule not currently approved by APHIS, we may approve the use of that schedule to treat that commodity if efficacy data supports it.
- The use of a treatment schedule is no longer authorized by EPA or by any other Federal entity. The use of certain chemicals in phytosanitary treatments is authorized by EPA; if EPA withdraws approval for the use of a chemical, we must also withdraw any treatment schedules that require the use of that chemical. Similarly, if the Department of Health and Human Services' Food and Drug Administration changed the maximum absorbed dose of irradiation for food, we might need to revise our irradiation treatment requirements to reflect the new limit.

If we determined that a change to the Treatment Manual needed to be made immediately, we would publish in the **Federal Register** a notice describing the reasons we determined that it is necessary to immediately add, revise, or remove a treatment schedule and, if necessary, making available the new or revised treatment schedule as it has been added to the PPQ Treatment Manual. Treatment schedules that were added to the PPQ Treatment Manual or revised under this process would be listed in a separate section of the PPQ Treatment Manual as having been added or revised through the immediate process described in proposed paragraph (b). The PPQ Treatment Manual would indicate that these treatment schedules are subject to change or removal based on public comment. In our notice, we would provide for a public comment period on the new or revised treatment schedule or on the removal of the treatment schedule from the PPQ Treatment Manual.

After the close of the public comment period, we would issue a notice affirming the action described in the initial notice if:

- No comments were received on the notice;
- The comments on the notice supported our action; or
- The comments on the notice were evaluated but did not change our determination that it was necessary to add, revise, or remove the treatment schedule, as described in the notice.

If the notice issued after the close of the public comment period indicates that the initial change to the PPQ Treatment Manual is affirmed, APHIS would make available a new version of the PPQ Treatment Manual that would reflect the addition, revision, or removal of the particular treatment schedule in the main body of the PPQ Treatment Manual.

If comments on the initial notice present information that causes us to determine that it is necessary to change a treatment schedule added to the PPQ Treatment Manual under the immediate process or to further revise a treatment schedule that was revised under this process, APHIS would publish a notice in the **Federal Register** informing the public of this determination after the close of the comment period and would revise the treatment schedule accordingly.

If comments present information that causes us to determine that the change described in the initial notice was not appropriate, APHIS would publish a notice in the **Federal Register** informing the public of this determination after the close of the comment period and will, if necessary, remove the new or revised treatment schedule from the separate section of the PPQ Treatment Manual.

These notice-based processes would enable us to make changes more quickly to the treatment schedules in the PPQ Treatment Manual while continuing to provide for public participation in the process. Changes to the general treatment requirements that we propose to retain in part 305 would still be made through rulemaking. We invite public comment on this approach.

Monitoring and Certification of Treatments

Proposed § 305.4 would set out requirements for monitoring and certification of treatments. Paragraph (a) of proposed § 305.4 is taken from current § 305.3(a) and states that all treatments approved under part 305 are subject to monitoring and verification by APHIS.

Paragraph (b) of proposed § 305.4 is based on current § 305.3(b). The regulations in § 305.3(b) require any treatment performed outside the United States to be monitored and certified by an inspector or an official from the national plant protection organization (NPPO) of the exporting country. If monitored and certified by an official of the NPPO of the exporting country, the regulations require treated commodities to be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country certifying that treatment was applied in accordance with APHIS regulations. The phytosanitary certificate must be provided to an inspector when the commodity is offered for entry into the United States. During the entire interval between treatment and export, the consignment must be stored and

handled in a manner that prevents any infestation by pests and noxious weeds.

This proposal would amend these requirements to indicate that any treatment performed outside the United States must be monitored and certified by an inspector or an official authorized by APHIS, to be consistent with the other requirements in part 305, which refer to officials authorized by APHIS rather than NPPO officials specifically. Proposed § 305.4(b) would state that the phytosanitary certification requirement applies when monitoring or certification involves an official authorized by APHIS. Proposed § 305.4(b) would also refer to treatment having been conducted in accordance with APHIS regulations, rather than to treatment having been applied, as the term ''conducted'' is more inclusive.

Chemical Treatment, Cold Treatment, Quick Freeze Treatment, and Heat Treatment Requirements Sections (§§ 305.5 Through 305.8)

These proposed sections are retained from the sections in part 305 that currently contain these requirements, as listed in table 2 earlier in this document. As part of this proposal, we would make some minor changes to these sections, as described below.

In all of these sections, we would indicate where appropriate that treatment schedules would be found in the PPQ Treatment Manual.

In the chemical treatment requirements section (§ 305.5), paragraph (c)(3) currently provides that the volume of the commodity stacked inside a chemical treatment enclosure must not exceed ⅔ of the volume of the enclosure. However, there may be some circumstances in which stacking that exceeds ⅔ of the volume of the enclosure is appropriate; these circumstances would be specified in the treatment schedule. Therefore, we would amend paragraph (c)(3) to indicate that the volume of the commodity stacked inside a chemical treatment enclosure must not exceed ⅔ of the volume of the enclosure unless otherwise specified in the PPQ Treatment Manual.

In the cold treatments requirements section (proposed § 305.6), paragraph (a) currently requires, among other things, that APHIS reapprove facilities or carriers that perform cold treatment annually, or as often as APHIS directs. We are proposing to change this to refer to reapproval every 3 years, or as often as APHIS directs. Three years is an adequate interval at which to conduct reapproval if there is no indication that the facility or carrier has problems performing cold treatment. If reapproval at shorter intervals is necessary, we would still have the option to require reapproval as often as APHIS directs.

Also in the cold treatment requirements section, paragraph (h) contains additional requirements for treatments performed after arrival in the United States. Several of these requirements call for the use of fruit fly traps to be used near the facility, and specifically list Jackson/methyl eugenol and McPhail traps. We are proposing to instead refer to ''APHIS-approved fruit fly traps,'' so that it would not be necessary to update the regulations if other effective fruit fly traps are developed in the future.

The quick freeze treatment section (§ 305.17) currently lists commodities for which quick freeze is not an authorized treatment. We are proposing to move these requirements to § 305.7 and to remove the list of commodities for which quick freeze treatment is not authorized. Instead, we would state that the PPQ Treatment Manual indicates the fruits and vegetables for which quick freeze is an authorized treatment. We would make changes to that list of fruits and vegetables through the notice-based process described earlier in this document.

Irradiation Treatment Requirements (Proposed § 305.9)

Part 305 currently contains three sections that set out requirements for performing irradiation treatment: § 305.31, for irradiation treatment of imported regulated articles; § 305.32, for regulated articles moved interstate from areas quarantined for fruit fly; and § 305.34, for regulated articles moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands. The requirements in these sections are mostly similar, and some of them are identical. As part of revising part 305, we are proposing to consolidate and harmonize the existing irradiation requirements into one section that would set out irradiation requirements for all articles for which irradiation is an authorized treatment.

Current §§ 305.31, 305.32, and 305.34 refer to approval of certain processes and equipment both by APHIS and by the Administrator. In proposed § 305.9, we would only refer to approval by APHIS. We would replace references to ''plant protection service'' with references to ''national plant protection organization,'' as that is the term used in the International Plant Protection Convention's (IPPC) Glossary of Phytosanitary Terms (International Standard for Phytosanitary Measures No. 5).[2] We would also replace references to ''fruits and vegetables'' with references to ''articles,'' as irradiation is also approved to treat commodities other than fruits and vegetables, such as nuts, foliage, and cut flowers.

As noted previously, current § 305.34 states that it applies to irradiation treatment of certain regulated articles from Hawaii, Puerto Rico, and the U.S. Virgin Islands. In a final rule published in the **Federal Register** on January 16, 2009 (74 FR 2770–2786, Docket No. APHIS–2007–0052) and effective on February 17, 2009, we revised the regulations for the interstate movement of most regulated articles in part 318. The final rule amended certain general provisions in part 318 that had applied only to Hawaii, Puerto Rico, and the U.S. Virgin Islands and extended their applicability to Guam and the Commonwealth of the Northern Mariana Islands. We would extend the applicability of the irradiation regulations similarly. (For ease of reading, we will refer to these jurisdictions collectively as ''Hawaii and U.S. territories'' in the Background section of this document and would do so as well in proposed § 305.9.)

Currently, paragraph (a) of § 305.31 sets out approved irradiation doses for specific plant pests. Paragraph (a)(1) of § 305.34 sets out approved irradiation doses for some specific fruits and vegetables moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands. In addition, paragraph (a)(1) of § 305.32 refers to treatment for fruit fly at the approved dose listed in § 305.31(a), and paragraph (a)(2) of § 305.34 refers to treatment of other regulated articles from Hawaii, Puerto Rico, and the U.S. Virgin Islands at the doses listed in § 305.31(a). We would remove this information from the regulations and add it to the PPQ Treatment Manual.

Proposed § 305.9 would begin with a statement that irradiation, carried out in accordance with the provisions of proposed § 305.9, is approved as a treatment for any imported regulated article (*i.e.,* fruits, vegetables, cut flowers, and foliage), for any regulated article moved interstate from Hawaii and U.S. territories, and for any berry, fruit, nut, or vegetable listed as a regulated article in § 301.32–2(a) (*i.e.,* the fruit fly quarantine regulations).

Proposed paragraph (a) of § 305.9 would set out requirements for the

[2] To view this and other standards on the Internet, go to *http://www.ippc.int/IPP/En/default.jsp* and click on the ''Adopted ISPMs'' link under the ''Standards (ISPMs)'' heading.

location of facilities. Paragraph (a)(1) would address the location of facilities used to treat imported regulated articles and regulated articles moved interstate from Hawaii or U.S. territories. Requirements for the location of facilities used to treat such articles are currently found in § 305.31(b) and § 305.34(b)(1). These requirements are identical except that § 305.31(b) contains a footnote that also allows irradiation facilities to be located at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA, if certain special conditions are met, including requirements for movement and handling of articles, fruit fly trapping, and disposal of articles. Section 305.34(b)(1) does not contain this footnote. We are proposing to move these conditions into the regulatory text of proposed paragraph (a)(1). As these special conditions would be adequate to address the pest risk associated with the movement of regulated articles moved interstate from Hawaii or U.S. territories for irradiation treatment at those ports, we would provide for the use of these special conditions for both imported regulated articles and regulated articles moved interstate from Hawaii and U.S. territories.

The footnote in current § 305.31(b) requires the use of Jackson/methyl eugenol and McPhail traps; similar to the changes proposed for the cold treatment requirements, we would instead refer in proposed paragraph (a)(1) to ''APHIS-approved fruit fly traps,'' so that it will not be necessary to update the regulations if other effective fruit fly traps are developed in the future.

Proposed paragraph (a)(2) of § 305.9 would address the location of facilities used to treat regulated articles to be moved interstate from areas quarantined for fruit flies. The regulations in § 305.32 currently do not contain a specific requirement related to the location of facilities. Under proposed § 305.9(a)(2), facilities for irradiation of articles that are moved interstate from areas quarantined for fruit flies could be located either within or outside of the quarantined area. If the articles are treated outside the quarantined area, they would have to be accompanied to the facility by a limited permit issued in accordance with § 301.32–5(b), the paragraph in the domestic fruit fly quarantine regulations that contains provisions for limited permits, and would have to be moved in accordance with any safeguards determined to be appropriate by APHIS. This provision would ensure that APHIS could impose any safeguards that may be necessary for the safe movement of untreated articles from a fruit fly quarantined area to a facility located outside the quarantined area, just as APHIS has the option to impose safeguards on the movement of untreated articles from foreign countries or from Hawaii and U.S. territories to an irradiation facility for treatment.

Paragraph (b) of proposed § 305.9 would state that the irradiation treatment facility would have to be approved by APHIS. In order to be approved, a facility would have to fulfill the requirements in paragraphs (c) and (d) of proposed § 305.9.

Paragraph (c) of proposed § 305.9 would set out requirements for compliance agreements. Proposed paragraph (c)(1) would set out the compliance agreement requirements for facilities treating imported articles; paragraphs (c)(1)(i) and (c)(1)(ii) would apply to facilities located in the United States and to facilities outside the United States, respectively. These paragraphs would contain the requirements currently in paragraphs (c) and (d) of § 305.31.

Proposed paragraph (c)(2) would address the compliance agreement requirements for facilities treating regulated articles moved interstate from Hawaii and U.S. territories. It would require a compliance agreement with APHIS to be completed as provided in § 318.13–3(d), the paragraph in part 318 that governs compliance agreements for the movement of regulated articles from Hawaii and U.S. territories. This requirement is currently found in § 305.34(b)(2)(iii).

Proposed paragraph (c)(3) addresses the compliance agreement requirements for facilities treating regulated articles to be moved interstate from areas quarantined for fruit flies. It would require a compliance agreement with APHIS to be completed as provided in § 301.32–6. This requirement is currently found in § 305.32(a)(3).

Proposed paragraph (d) would set out requirements for certification of an irradiation treatment facility. The introductory text of paragraph (d) would contain the certification and recertification requirements currently found in the introductory text of § 305.31(e), paragraph (a)(4) of § 305.32, and paragraph (b)(2)(iv) of § 305.34.

Under proposed paragraph (d), the irradiation treatment facility would have to be certified by APHIS. This language is drawn from current § 305.31(e). Unlike § 305.31(e), §§ 305.32(a)(4) and 305.34(b)(2)(iv) refer to certification by PPQ and require annual recertification. We have determined that it is not necessary to require annual recertification for facilities used to treat regulated articles moved interstate from Hawaii and U.S. territories or regulated articles moved interstate from areas quarantined for fruit flies, in the absence of one of the events currently listed in the regulations as a reason for recertification.

Recertification would be required in the event of an increase or significant decrease in the amount of radioisotope, a major modification to equipment that affects the delivered dose, or a change in the owner or managing entity of the facility. Only the regulations in § 305.31(e) currently include a change in the owner or managing entity of the facility as a reason for recertification; we have determined that this requirement would be appropriate for irradiation facilities used to treat regulated articles moved interstate from Hawaii and U.S. territories and regulated articles to be moved interstate from areas quarantined for fruit flies as well, to ensure that currently certified facilities continue to comply with the regulations under new ownership or management. (The regulations currently refer only to a decrease in the amount of radioisotope; because the amount of radioisotope decreases in very small amounts during treatment, we are proposing to add the word ''significant'' to better characterize the type of decrease that would require recertification.)

Recertification also could be required in cases where a significant variance in dose delivery has been measured by the dosimetry system. The requirements in §§ 305.32(a)(4) and 305.34(b)(2)(iv) refer to recertification in cases where a significant variance in dose delivery is indicated; the language in § 305.31(e), which we use in this proposal, provides helpful additional specificity.

Proposed paragraphs (d)(1) through (d)(3) set out requirements for certification. In order to be certified, a facility would have to:

- Be capable of administering the minimum absorbed ionizing radiation doses specified in the PPQ Treatment Manual to the regulated articles. This requirement is drawn from §§ 305.31(e)(1), 305.32(a)(1), and 305.34(b)(2)(i). We would add the reference to the PPQ Treatment Manual to be consistent with the other changes in this proposal.
- Be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, except that fruits and vegetables traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations would have to be separated by a permanent physical barrier such as a wall or chain link fence

6 or more feet high to prevent transfer of cartons, or some other means approved during certification to prevent reinfestation of articles and spread of pests. This requirement is drawn from § 305.31(e)(2). The same requirements are included in §§ 305.32(a)(2) and 305.34(b)(2)(ii), except that these paragraphs do not provide for the use of some means other than a physical barrier that would be approved during certification to prevent reinfestation of articles and spread of pests. Providing such an option for irradiation facilities treating regulated articles moved interstate from Hawaii and U.S. territories and regulated articles to be moved interstate from areas quarantined for fruit flies would increase flexibility for such facilities without increasing risk, since any other means used to prevent reinfestation would be subject to APHIS approval during certification.

- If the facility is to be used to treat imported articles and is located in the United States, the facility would only be certified if APHIS determines that regulated articles would be safely transported to the facility from the port of arrival without significant risk that plant pests will escape in transit or while the regulated articles are at the facility. This requirement is drawn from § 305.31(e)(3). It is not necessary to include a similar requirement for facilities treating articles moved interstate from Hawaii and U.S. territories or articles moved interstate from an area quarantined for fruit flies, as their movement is governed by a limited permit; before granting a limited permit, APHIS would have to determine that the movement of the articles could be accomplished safely.

Paragraph (e) of proposed § 305.9 would set out requirements for monitoring and interagency agreements. The introductory text of proposed paragraph (e) would state that treatment must be monitored by an inspector and that this monitoring will include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. This requirement is drawn from current §§ 305.31(f), 305.32(b), and 305.34(b)(3).

Proposed paragraph (e)(1) would set out requirements for monitoring and interagency agreements for irradiation facilities located in foreign countries. These requirements would be moved from § 305.31(f). These requirements currently apply to any facility treating imported articles, and they are somewhat more detailed and rigorous than the monitoring requirements for irradiation facilities treating articles moved interstate from Hawaii and U.S. territories and from areas quarantined for fruit flies. The additional requirements are necessary because ensuring that the irradiation treatment requirements are met when monitoring irradiation treatment in a foreign country involves an additional layer of complexity; such monitoring requires us to work with foreign governments to ensure that all requirements are met, while monitoring the irradiation treatment of articles treated within the United States does not.

Irradiation treatment of imported articles can be conducted either in the country of origin or within the United States, but the detailed requirements for monitoring and interagency agreements in § 305.31(f) only apply to facilities located in foreign countries, for the reasons described above. Therefore, we are proposing to clearly indicate in the regulatory text that these requirements only apply to irradiation facilities located in foreign countries, not necessarily all facilities that treat imported articles.

We would make one change to the requirements for monitoring and interagency agreements for facilities located in foreign countries. The trust fund agreement requirements refer to the NPPO of the country in which the irradiation facility is located entering into a trust fund with APHIS. Often, we enter into the trust fund with a private export group that operates the facility. Therefore, we would amend the existing text describing trust fund agreements to refer to entering into the agreement either with the NPPO or with a private export group. This change would be consistent with the general language governing trust fund agreements related to the importation of fruits and vegetables in § 319.56–6.

Proposed paragraph (e)(2) would set out requirements for monitoring and interagency agreements for irradiation facilities located within the United States. This paragraph would contain the current requirements for irradiation facilities treating articles moved interstate from areas quarantined for fruit flies and from Hawaii and U.S. territories in §§ 305.32(b) and 305.34(b)(3), respectively; those paragraphs are identical. For the reasons described above, we have determined that these requirements would also be appropriate for irradiation facilities located within the United States that are used to treat imported articles.

Proposed paragraph (f) of § 305.9 would set out packaging requirements. Under proposed paragraph (f)(1), irradiated articles would not be allowed to be packaged for shipment in a carton with nonirradiated articles. This requirement is drawn from current §§ 305.31(g)(1) and 305.34(b)(2), which apply to articles imported into the United States and articles moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands, respectively; we have determined that it is appropriate for articles moved interstate from areas quarantined for fruit flies as well, as it helps to reduce the risk of reinfestation of treated articles.

Current paragraph (g)(1) of § 305.31 also requires irradiated articles to be shipped in the same cartons in which they are treated; the irradiation treatment regulations for articles moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands and for articles moved interstate from areas quarantined for fruit flies do not contain such a requirement. We have determined that requiring irradiated articles to be shipped in the same cartons in which they are treated is unnecessary. The requirement is intended to prevent untreated articles from being shipped and to prevent treated articles from being infested with fruit flies after treatment, but other requirements in the irradiation treatment regulations (such as those discussed directly above and below) adequately address this issue. Additionally, treatment is always monitored by an inspector, who will be able to ensure that adequate safeguarding measures are practiced. Accordingly, the irradiation treatment regulations proposed here do not include the same-carton requirement.

The current packaging requirements in the irradiation treatment regulations specifically address fruit flies. However, irradiation treatment is approved for pests other than fruit flies, and some commodities that are irradiated are not fruit fly hosts. Therefore, we are proposing to amend the current requirements to refer to packaging sufficient to prevent the infestation or reinfestation of the treated articles by the pests of concern, rather than fruit flies specifically.

Proposed paragraph (f)(2) sets out packaging requirements for imported articles treated prior to arrival in the United States; for regulated articles moved interstate from Hawaii or U.S. territories and irradiated prior to arrival in the mainland United States; and for regulated articles to be moved interstate from areas quarantined for fruit flies that are treated within the quarantined area. The requirements in proposed paragraph (f)(2) are drawn from §§ 305.31(g)(3), 305.32(c), and 305.34(b)(4)(i).

Under this paragraph, the articles to be irradiated would have to be packaged either:

- In insect-proof cartons that have no openings that will allow the entry of the pests of concern. The cartons would have to be sealed with seals that will visually indicate if the cartons have been opened. The cartons could be constructed of any material that prevents entry or oviposition (if applicable) by the pests of concern into the articles in the carton; or
- In noninsect-proof cartons that are stored immediately after irradiation in a room completely enclosed by walls or screening that completely precludes access by the pests of concern. If stored in noninsect-proof cartons in a room that precludes access by the pests of concern, prior to leaving the room, each pallet of cartons would have to be completely enclosed in polyethylene shrink wrap, or another solid or netting covering that completely precludes access to the cartons by the pests of concern.

These two options are drawn from current § 305.31(g)(3), which applies to imported commodities treated prior to arrival in the United States. Current §§ 305.32(c) and 305.34(b)(4)(i), which apply, respectively, to articles treated in Hawaii, Puerto Rico, or the U.S. Virgin Islands and to articles treated in an area quarantined for fruit fly, do not provide the option to use noninsect-proof cartons; providing this option for treatment of those articles increases flexibility without increasing risk, since APHIS would have to approve any room used to store treated articles in noninsect-proof cartons.

Each pallet-load of cartons containing the fruits and vegetables would have to be wrapped before leaving the irradiation facility in one of the following ways:

- With polyethylene shrink wrap;
- With net wrapping; or
- With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

These requirements are drawn from current §§ 305.31(g)(3)(ii), 305.32(c)(2), and 305.34(b)(4)(i)(B). Current § 305.31(g)(3)(ii) states that the wrapping requirements are intended to preserve the identity of treated lots. Instead of referring to the identity of the treated lots, we are proposing to refer to the integrity of the treated lots, as the requirements are intended to allow treated lots to be easily identifiable and separated from untreated lots.

Packaging would have to be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment. This requirement is drawn from current §§ 305.31(g)(3)(iii), 305.32(c)(3), and 305.34(b)(4)(i)(C).

Under current § 305.31(g)(3)(iii), pallets of imported articles that are treated prior to arrival in the United States must remain intact as one unit until entry into the United States and may have one such label per pallet, and pallets that are broken apart into smaller units prior to or during entry into the United States must have the required label information on each individual carton. We would retain these requirements in proposed § 305.9(f)(2)(iii)(A) and would extend their applicability in proposed § 305.9(f)(2)(iii)(B) to articles moved interstate from Hawaii and U.S. territories that are treated prior to arrival in the mainland United States. We are also proposing to require label information on individual cartons if the pallets will be broken apart after entry into the mainland United States as well. These requirements would ensure that we can conduct traceback to the treatment facility if necessary and would also indicate to inspectors that the articles have been subject to an approved treatment and have moved under certificate or limited permit, whichever is applicable.

Similar requirements for labeling of cartons within pallets are not necessary for articles moved interstate from areas quarantined for fruit flies and treated prior to interstate movement, because the articles enter commerce directly after treatment, meaning that there is no gap in distance or time between treatment and distribution that would necessitate additional information for traceback. In addition, because such articles are moved directly into commerce, they are not typically palleted.

Proposed paragraph (f)(3) of § 305.9 would set out the requirements for packaging for articles imported to be irradiated upon arrival in the United States, moved interstate to be irradiated upon arrival in the mainland United States, or moved interstate from areas quarantined for fruit flies to be irradiated. Under this paragraph, such articles would have to be packed in cartons that have no openings that will allow the exit of the pests of concern and that are sealed with seals that will visually indicate if the cartons have been opened. They could be constructed of any material that prevents the pests of concern from exiting the carton. These requirements are drawn from current § 305.31(g)(2), which applies to articles irradiated after importation into the United States; we have determined that they are appropriate for regulated articles irradiated after interstate movement from Hawaii and U.S. territories and regulated articles irradiated after interstate movement from areas quarantined for fruit flies as well, in order to provide additional protection against the introduction of quarantine pests. Current § 305.31(g)(2) refers to preventing the entry of the pests of concern into the cartons; we are proposing to refer to the exit of those pests, because this measure is designed to prevent pests that have infested the articles from being introduced into the United States before the articles are treated.

Proposed paragraph (f)(3) would also require that cartons of such articles be shipped in shipping containers sealed prior to their shipment with seals that will visually indicate if the shipping containers have been opened. This requirement is drawn from § 305.34(b)(4)(ii), which applies to articles treated before they are moved interstate from Hawaii, Puerto Rico, or the U.S. Virgin Islands into the United States. We have determined that this requirement is appropriate for imported articles treated after importation and articles moved interstate from areas quarantined for fruit flies that are treated after movement as well, because it provides additional protection against the introduction of quarantine pests.

The labeling requirements in § 305.34 also include provisions prohibiting the interstate movement of litchi and longan from Hawaii into Florida and requiring all cartons in which litchi or longan are packed to be stamped ''Not for importation into or distribution in FL.'' These provisions would be better placed in the regulations governing the interstate movement of fruits and vegetables in part 318, since the labeling requirements here are not related to irradiation treatment but rather to the risk posed by the litchi rust mite, which is not addressed by irradiation. Accordingly, we are proposing to amend the table of regulated articles allowed interstate movement under specified conditions in § 318.13–16 by adding entries for litchi and longan from Hawaii; these entries would indicate that the interstate movement of litchi and longan from Hawaii is subject to the distribution restriction and labeling requirements that are currently found in § 305.34. We would also change the required stamp to refer correctly to movement into Florida, rather than importation.

Proposed paragraph (g) of § 305.9 would require that containers or vans that will transport treated articles be free of pests prior to loading the treated articles. This requirement is drawn from

current § 305.31(h), which applies to imported articles that have been treated with irradiation. We are also proposing to apply this requirement to the transportation of treated articles moved interstate from Hawaii and U.S. territories and treated articles to be moved interstate from areas quarantined for fruit flies, as it provides additional phytosanitary security.

Proposed paragraph (h) of § 305.9 would contain the phytosanitary certification requirement for imported articles that is currently found in § 305.31(i). However, we would amend this requirement to refer to consignments rather than shipments, as ''consignments'' is the term used in the IPPC Glossary of Phytosanitary Terms.

Paragraph § 305.34(b)(7) of the regulations governing irradiation treatment of articles moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands contains specific requirements for certification or limited permits for the interstate movement of several commodities that apply in addition to irradiation treatment. For example, breadfruit and jackfruit, which have specific requirements for certification and limited permits in §§ 305.34(b)(7)(i)(C) and 305.34(b)(7)(ii)(C), respectively, must be inspected and found to be free of various pests, treated with irradiation for fruit flies, subjected to a treatment for external feeders or originate from an orchard or growing area that has been treated with a broad-spectrum insecticide, free of stems and leaves, and originate from an orchard that was treated with a fungicide appropriate for the fungus *Phytophthora tropicalis* or subjected to a post-harvest fungicidal dip appropriate for that fungus. These requirements are not related to irradiation treatment, but rather address other pest risks that irradiation treatment does not mitigate. Accordingly, we are proposing to move the specific certification and limited permit requirements currently found in § 305.34(b)(7)(i)(A) through (H) and § 305.34(b)(7)(ii)(A) through (D) to part 318. Specifically:

- The certification and limited permit requirements for litchi from Hawaii, which are found in paragraphs (b)(7)(i)(A) and (b)(7)(ii)(A) of § 305.34, respectively, refer only to inspection for freedom from pests. As movement of any fruit or vegetable from Hawaii is subject to inspection for freedom from pests under § 318.13–3, it would not be necessary to retain this specific requirement in the regulations.
- The certification and limited permit requirements for sweetpotatoes, which are found in paragraphs (b)(7)(i)(B) and (b)(7)(ii)(B) of § 305.34, respectively, would be added to § 318.13–25, which contains requirements for the interstate movement of sweetpotatoes from Hawaii with vapor heat treatment.
- The certification and limited permit requirements for breadfruit and jackfruit, which are found in paragraphs (b)(7)(i)(C) and (b)(7)(ii)(C) of § 305.34, respectively; the certification and limited permit requirements for fresh pods of cowpea and its relatives, which are found in paragraphs (b)(7)(i)(D) and (b)(7)(ii)(D) of § 305.34, respectively; and the certification requirements for dragon fruit, mangosteen, melon, and moringa pods, which are found in paragraphs § 305.34(b)(7)(i)(E) through (b)(7)(i)(H), respectively, would be included in a new § 318.13–26. This new section would indicate explicitly that irradiation treatment is required for these commodities, in addition to the other requirements.

In addition, because we are proposing to remove specific irradiation doses from the regulations, as discussed earlier, we would amend the specific certification and limited permit provisions by removing references to specific irradiation doses and replacing them with references to irradiation treatment for certain pests. For example, in order to be certified for interstate movement under current § 305.34(b)(7)(i)(C), breadfruit and jackfruit must be inspected in Hawaii and found to be free of certain pests and treated at the 150 gray dose to neutralize fruit flies. Inspection for plant pests of the class Insecta (except pupae and adults of the order Lepidoptera) is unnecessary if the fruits are treated at the 400 gray dose, which is approved to neutralize those plant pests. Rather than include the doses in the revised irradiation treatment requirements, we would simply refer in the new § 318.13–26 to treatment at a dose approved to neutralize fruit flies or at a dose approved to neutralize all plant pests of the class *Insecta,* except pupae and adults of the order Lepidoptera. We would also remove references to treatment schedule T102–c, which is a soapy water dip treatment for external pests, and instead refer to treatment in accordance with part 305 for external pests. This would allow the regulations to conform with any changes we might make to the approved irradiation doses or other treatments through the notice-based process outlined earlier in this proposal.

General certification and limited permit provisions for articles moved interstate from Hawaii and U.S. territories are found in § 318.13–3; similarly, general certification and limited permit provisions for articles moved interstate from areas quarantined for fruit flies are found in § 301.32–5 of the domestic fruit fly quarantine regulations. It is not necessary to duplicate those general provisions in the irradiation treatment requirements.

Proposed paragraph (i) of § 305.9 would require that the regulated articles receive the minimum absorbed ionizing radiation dose specified in the PPQ Treatment Manual. The similar requirements currently found in §§ 305.32(d), for articles moved interstate from areas quarantine for fruit flies, and 305.34(b)(5), for articles moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands, refer to receiving the dose specified in the regulations; we would change this reference as part of moving the lists of approved treatments and schedules to the PPQ Treatment Manual. The regulations for the irradiation treatment of imported articles do not contain a similar requirement, although it is implied; we believe it would be helpful to make the requirement explicit for all types of articles.

Proposed paragraph (j) of § 305.9 sets out requirements for dosimetry systems at the irradiation facility. Such requirements are currently contained in §§ 305.31(j), 305.32(e), and 305.34(b)(6). Although there are wording differences among the current requirements for dosimetry systems, they are substantively identical, and we have incorporated them into the proposed text with minor changes to ensure consistency.

Proposed paragraph (j)(1) would require dosimetry to indicate the doses needed to ensure that all the articles will receive the minimum dose prescribed.

Proposed paragraph (j)(2) would require the absorbed dose, as measured using an accurate dosimetry system, to meet or exceed the absorbed dose for the pest(s) of concern required by the PPQ Treatment Manual. The current dosimetry requirements refer to receiving the dose specified in the regulations; we would change this reference as part of moving the lists of approved treatments and scheduled to the PPQ Treatment Manual.

Proposed paragraph (j)(3) would require the facility operator, when designing the facility's dosimetry system and procedures for its operation, to address guidance and principles from the International Standards Organization/American Society for Testing and Materials standard or an equivalent standard recognized by APHIS.

Proposed paragraph (k) of § 305.9 set outs requirements for recordkeeping. These requirements are copied from §§ 305.31(k), 305.32(f), and 305.34(b)(8), which are identical.

Proposed paragraph (l) of § 305.9 sets out requirements for requesting certification and inspection of a facility. Under this paragraph, persons requesting certification of an irradiation treatment facility would have to submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Inspection and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606–5202. The initial request would have to identify the owner, location, and radiation source of the facility, and the applicant must supply additional information about the facility construction, treatment protocols, and operations upon request by APHIS if APHIS requires additional information to evaluate the request. Before the Administrator determines whether an irradiation facility is eligible for certification, an inspector would make a personal inspection of the facility to determine whether it complies with the standards of proposed § 305.9.

These requirements are taken from current § 305.31(l), which applies to facilities used to treat imported articles. Similar requirements are contained in §§ 305.32(g), which applies to facilities used to treat articles moved interstate from areas quarantined for fruit flies, and 305.34(c), which applies to facilities used to treat articles moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands. Proposed paragraph (l) differs in that it refers to the certification of a facility, rather than to approval of a facility. Current §§ 305.32(g) and 305.34(c) also do not include the requirement that the initial request for certification include the information described earlier. The submission of such information in requests for certification of irradiation facilities used to treat regulated articles moved interstate from Hawaii and U.S. territories or regulated articles to be moved interstate from areas quarantined for fruit flies would allow us to more efficiently evaluate requests for certification.

In this proposal, we would also update the address of the Center for Plant Health Science and Technology, which is now located at the address given above.

Proposed paragraph (m) of § 305.9 sets out provisions for denial and withdrawal of certification. These requirements are taken from current § 305.31(m). Except for referring to approval of a facility rather than certification, the requirements for denial and withdrawal in §§ 305.32(h) and 305.34(d) are identical to the requirements in proposed § 305.31(m).

Proposed paragraph (n) of § 305.9 informs the reader that the Department is not responsible for damage to treated articles. This proposed paragraph is copied from current §§ 305.31(n), 305.32(i), and 305.34(e), which are identical.

The proposed changes to the irradiation treatment regulations would make the requirements more consistent across different types of facilities and would eliminate redundant text. We invite public comment on these changes.

Removal of Treatment Schedules From 7 CFR Parts 301 and 319

Although part 305 serves as the main source for treatment schedules authorized under 7 CFR chapter III, there are also some other treatment schedules contained in parts 301 and 319. As part of this proposal, we would remove those schedules from the regulations and (if necessary) add them to the PPQ Treatment Manual. The schedules we are proposing to remove from the regulations are:

- Fumigation and cold treatment schedules for pine shoot beetle in paragraphs (a) through (c) of § 301.50–10;
- Various treatments for citrus canker in § 301.75–11;
- Chemical treatments in the appendix to the subpart for imported fire ant (§§ 301.81 through 301.81–10);
- Heat and disinfection treatments for sugarcane diseases in § 301.87–10;
- Cleaning and disinfection treatments for Karnal bunt in § 301.89–13;
- Heat treatments for *Phytophthora ramorum* in § 301.92–10;
- A methyl bromide fumigation treatment for Unshu oranges from Japan and Korea in § 319.28(b)(5);
- Heat treatment and fumigation schedules for regulated wood packing material in § 319.40–3(b)(1);
- Heat treatment, fumigation, and surface pesticide treatments for regulated wood in § 319.40–7(c) through (f);
- Treatments for disinfection of broomcorn and broomcorn products in § 319.41–5a;
- A specific temperature requirement for quick freeze treatment in § 319.56–12;
- Disinfection treatments for Karnal bunt in paragraphs (d)(3)(i) through (d)(3)(iii) of § 319.59–4; and
- Fumigation treatment schedules for cut flowers in paragraph (c)(2) of § 319.74–2.

Under the heading ''4. Imported-Fire-Ant-Free Nursery—Containerized Plants Only,'' the appendix to the imported fire ant subpart describes a systems approach for ensuring nursery freedom from imported fire ant and provides conditions under which containerized nursery stock may be certified for interstate movement under § 301.81–5. We would move this systems approach to a new section § 301.81–11, moving the chemical treatment schedules included in the systems approach to the PPQ Treatment Manual and making minor editorial changes to accommodate the movement of the systems approach requirements into the new section. This change would thus remove the appendix from the imported fire ant subpart.

Because we would remove the schedules listed above from the regulations, we would also need to update references to those schedules elsewhere in the regulations. The specific changes we are consequently proposing can be found in the regulatory text at the end of this document.

We would retain in the regulations treatments that are not intended for use on regulated articles but rather for use on premises, such as the malathion or spinosad bait spray treatments in § 301.32–10(b) for premises in fruit fly quarantined areas.

Miscellaneous Changes

In addition to removing treatment schedules, the changes proposed here would also make it necessary to update several references to treatments throughout 7 CFR chapter III. For example, several requirements within ''Subpart—Fruits and Vegetables'' (§§ 319.56–1 through 319.56–48) refer to authorized treatments listed in 7 CFR part 305. As we are proposing to revise it, part 305 would not list specific authorized treatments; it would instead refer the reader to the PPQ Treatment Manual for specific approved treatments. Accordingly, we would amend references to authorized treatments listed in 7 CFR part 305 to refer instead to treatment in accordance with 7 CFR part 305.

Other changes are required when the regulatory text refers to specific sections or treatments in the current 7 CFR part 305; for example, the ''Subpart—Hawaiian Fruits, Vegetables, and Flowers'' regulations sometimes refer specifically to irradiation treatment in accordance with § 305.34. These references would be amended to refer

generally to part 305, rather than to a specific section or treatment. All of the changes we are making to ensure consistency with the proposed changes can be found in the regulatory text at the end of this document.

Some requirements in 7 CFR chapter III refer to treatment of articles, but do not refer specifically to treatment in accordance with part 305. We are proposing to include references to treatment in accordance with part 305 in existing treatment requirements in §§ 318.47–3(a), 319.8–23(a)(1), and 319.55–6(b)(1).

Some other provisions in 7 CFR chapter III refer generally to treatment as well. Within part 330, which addresses the risks posed by movement of plant pests; soil, stone, and quarry products; and garbage, §§ 330.106(a) and 330.300 refer to treatment as a mitigation an inspector can direct to be employed in certain circumstances. In part 352, which contains provisions for safeguarding plants and plant products that transit the United States, § 352.10(b)(2)(viii) refers to the availability of treatment facilities as a factor in granting a transit permit, and § 352.30 refers to treatment as may be required by an inspector for shipping containers used to transport untreated citrus in order to prevent plant pest dissemination. We are proposing to amend these references to ''treatment'' to refer specifically to treatment in accordance with part 305.

The regulations for the interstate movement of sweetpotatoes from Hawaii with vapor heat treatment in § 318.13–25 contain packaging requirements similar to those for irradiated articles moved interstate from Hawaii. These packaging requirements refer to preventing infestation by fruit flies, but sweetpotato is not a host of fruit flies. For the same reasons discussed earlier with respect to the irradiation packaging requirements, we would amend these requirements to refer instead to ''the pests of concern.''

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.

APHIS is proposing amendments to 7 CFR parts 301, 305, 318, and 319 to streamline the process for adding, revising, and removing treatment schedules and for authorizing the use of existing treatments for additional commodities. As required by the Regulatory Flexibility Act, we have evaluated the potential economic effects of this action on small businesses, small organizations, and small governmental jurisdictions

The regulations in 7 CFR chapter III are intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. Under the regulations, certain plants, fruits, vegetables, and other articles must be treated before they may be moved into the United States or interstate. The phytosanitary treatments regulations contained in part 305 set out standards and schedules for treatments required in parts 301, 318, and 319 for fruits, vegetables, and other articles.

APHIS is proposing to remove the lists of authorized treatments and treatment schedules from part 305, while retaining the general requirements for performing treatments and treatment facilities. We would remove treatment schedules from other places where they are currently found in parts 301 and 319 as well. Treatment schedules would instead be found in the PPQ Treatment Manual. We are also proposing to establish a new process to make changes to the lists of approved treatments and the treatment schedules and to inform the public and solicit comments on the changes. We would also establish a process by which we could make immediate changes to the lists of approved treatments and to the treatment schedules, and establish criteria for when we could use this process. The current regulations do not address situations where there is an immediate need to withdraw treatments, modify treatments, or apply treatments differently. Finally, we would harmonize the separate requirements for performing irradiation treatment for imported articles, articles moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands, and articles moved interstate from an area quarantined for fruit flies. These changes would simplify and expedite our processes for adding, changing, and removing treatment schedules while continuing to provide for public participation in the process. These changes would also simplify our presentation of treatments to the public by consolidating all treatments into one document and eliminating redundant text from the regulations.

Eliminating the need for specific prior rulemaking for approving new treatments or treatment schedules or for revising existing ones under the proposed notice-based process, could result in considerable time savings. The rulemaking process is an inherently longer process than a notice-based process. Additionally, establishing a notice-based process for approving new treatments or treatment schedules would facilitate use of the already-established notice-based process for authorizing the importation of fruits and vegetables set out in § 319.56–4. Under § 319.56–4, APHIS can authorize the importation of fruits and vegetables via a notice-based process if APHIS makes the determination that the application of one or more designated phytosanitary measures is sufficient to mitigate the risk that plant pests or noxious weeds could be introduced into or disseminated within the United States via the imported fruits or vegetables. Currently, however, if one of the prescribed designated measures is a treatment that requires an amendment to part 305, rulemaking is still required to amend the lists of approved treatments or treatment schedules. Establishing a notice-based process to amend the lists of approved treatments or treatment schedules would streamline this process.

Consumers benefit from the opportunity to consume commodities from a variety of sources, foreign as well as domestic. Consumer expenditures for fruit and vegetables are growing faster than for any food group other than meats. In many cases, fruit and vegetable imports can occur only after those commodities have been treated to prevent the introduction or movement of plant pests and/or diseases. This proposed rule would allow treatments to be put in use more quickly when treatment changes are necessary and when existing treatments are applied to new commodities; treated products would become available to meet consumer demand sooner than at present. Treated imports supplement domestic supplies, especially of fresh products during the winter. Treatments also allow for movement of domestically produced products to markets around the country that otherwise would not occur. This movement results in increased choices for consumers. Even where new imports compete directly with domestic production, consumers benefit when increased competition results in lower prices.

Those entities most likely to be affected by the rule are domestic importers and producers of plants and plant products. The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small. Import/export merchants, agents, and brokers are identified within the broader wholesaling trade sector. A firm primarily engaged in wholesaling is

considered small if it employs not more than 100 persons. In 2002, more than 96 percent of fresh fruit and vegetable merchant wholesalers, more than 99 percent of grain and field bean merchant wholesalers, and more than 98 percent of flower and nursery stock wholesalers were considered small by SBA standards.[3] All types of farms are considered small if they have annual receipts of $0.75 million or less. In 2002, more than 99 percent of oilseed and grain farms, more than 99 percent of vegetable and melon farms, more than 99 percent of fruit and tree nut farms, more than 99 percent of greenhouse, nursery, and floriculture producers, and more than 99 percent of other crop farms were considered small by SBA standards.[4]

Treatments are applicable to a wide variety of products including fruits, vegetables, live plants, bulbs, seeds, grains, logs, lumber, and other plants and plant products in a wide variety of circumstances. Vast quantities of treated products move into and through the United States annually. The United States is among the top producers and consumers of plants and plant products. U.S. per capita use of fruit and tree nuts totals nearly 300 pounds each year, ranking third in per capita consumption of major food groups, next to dairy and vegetables. Oranges, apples, grapes, and bananas are the most popular fruit while almonds, pecans, and walnuts are the most preferred tree nuts. Annual per capita use of all vegetables and melons averaged 445 pounds during the first 5 years of the 2000s.

TABLE 3—U.S. PRODUCTION VALUE OF SELECTED CROPS, 2004–2006

[$ million]

Item	2004	2005	2006
Field and miscellaneous crops:			
Cotton, tobacco, sugar	8,674	8,702	8,648
Dry beans, peas, lentils	596	650	637
Grains, hay	47,367	45,225	57,209
Oilseeds	20,115	19,681	22,412
Potatoes, misc.	4,054	4,472	4,731
Fruit and nuts:			
Apples, pears	1,696	1,969	2,567
Berries	2,082	2,300	2,668
Citrus	2,485	2,303	2,738
Grapes	3,010	3,494	3,304
Nuts, other noncitrus	4,047	4,784	4,132
Stone fruit	1,243	1,462	1,563
Fresh vegetables:			
Brassica	1,111	1,118	1,225
Lettuce, spinach	2,062	2,108	2,635
Melons	728	873	877
Onions, peppers	1,300	1,501	1,674
Tomatoes	2,445	2,609	2,670
Other vegetables	1,430	1,599	1,619

In 2006, U.S. production of field and miscellaneous crops was valued at more than $93 billion, with grains, hay, and oilseeds accounting for the majority of this value. Fruit and tree nuts production was valued at about $17 billion. More than 63 percent of this production was in grapes, apples, almonds, oranges, and strawberries. Commercial vegetable production for the fresh market was valued at almost $11 billion, with tomatoes, lettuce, onions, broccoli, and sweet corn accounting for about 60 percent of this value.

Imports have become increasingly important for domestic consumption. Imports of plants and plant products have expanded rapidly over the past two decades, and include many new and newly traded commodities. In 2006, the United States imported approximately $5.8 billion in fresh fruits and tree nuts, about $2.5 billion in fresh vegetables, and about $1.5 billion in live plants and other plant products. Logs, lumber, and other timber product imports were valued at nearly $12 billion in 2006.

TABLE 4—U.S. IMPORTS OF PLANTS AND PLANT PRODUCTS, 2004–2006

[$ million]

Item	2004	2005	2006
Live plants, bulbs, etc.:			
Bulbs, tubers	208	208	208
Cut flowers, dried	706	709	768
Foliage	102	114	123
Other live plants	362	352	358
Fruit and nuts:			
Bananas	1,102	1,134	1,201
Citrus, fresh	307	356	407

[3] 2002 Economic Census. Department of Commerce. U.S. Bureau of the Census. North American Industry Classification System (NAICS) Categories. 424480—Fresh fruit & Vegetable merchant wholesalers; 424510—Grain & field bean merchant wholesalers; 424930—Flower, nursery stock, and florists' supplies merchant wholesalers.

[4] 2002 Census of Agriculture. US Department of Agriculture. National Agricultural Statistics Service. NAICS Categories—1111: Oilseed & Grain farming; 1112: Vegetable and melon farming; 1113: Fruit and tree nut farming; 1114: Greenhouse, nursery & Floriculture production; and 1119: Other Crop farming.

TABLE 4—U.S. IMPORTS OF PLANTS AND PLANT PRODUCTS, 2004–2006—Continued

[$ million]

Item	2004	2005	2006
Coconuts, Brazil nuts	640	660	602
Dates, figs, pineapples	570	812	936
Grapes	743	980	953
Other fruits and nuts	1,127	1,174	1,297
Fresh vegetables:			
Cucumbers, gherkins	349	319	421
Melons	369	393	431
Onions, shallots	254	308	282
Tomatoes	1,054	1,075	1,234
Other vegetables	417	508	543
Logs, lumber, and other timber products:			
Wood in the rough	246	348	347
Wood, sawn or chipped	8,799	8,989	8,333
Other wood	2,894	3,074	3,235

While treatments are applicable to a wide variety of plants and plant products in a wide variety of circumstances, the changes proposed in this rule would not alter current treatment requirements, the manner in which new treatments are evaluated, or when and how treatments are ultimately used other than in emergency situations. The proposed rule would allow treatment changes to be implemented more rapidly and therefore facilitate the movement of treated products to meet consumer demand. These changes are not expected to significantly impact the total supply of plants and plant products in the United States. Therefore, we expect at most small effects on U.S. marketers and consumers.

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 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 305

Agricultural commodities, Chemical treatment, Cold treatment, Heat treatment, Imports, Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Quick freeze, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 318

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

7 CFR Part 319

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

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR chapter III as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

2. In § 301.32–10, in the introductory text, the first sentence is revised to read as follows:

§ 301.32–10 Treatments.

Regulated articles may be treated in accordance with part 305 of this chapter to neutralize fruit flies. * * *

* * * * *

§ 301.50–5 [Amended]

3. In § 301.50–5, paragraph (a)(1)(i) is amended by removing the citation ''§ 301.50–10(d)'' and adding the citation ''§ 301.50–10(b)'' in its place.

4. Section 301.50–10 is amended as follows:

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

b. By removing paragraphs (b) and (c).

c. By redesignating paragraph (d) as paragraph (b).

§ 301.50–10 Treatments and management method.

(a) Regulated articles may be treated in accordance with part 305 of this chapter to neutralize the pine shoot beetle.

* * * * *

§ 301.75–4 [Amended]

5. In § 301.75–4, paragraphs (d)(2)(i)(C), (d)(2)(ii)(C), (d)(2)(ii)(D), (d)(2)(ii)(E), and (d)(4) are amended by removing the words ''§ 301.75–11(d) of this subpart'' and adding the words ''part 305 of this chapter'' in their place; and paragraph (d)(4) is amended by removing the words ''§ 301.75–11(c) of this subpart'' and adding the words ''part 305 of this chapter'' in their place.

§ 301.75–6 [Amended]

6. In § 301.75–6, paragraphs (b)(5) and (b)(6) are amended by removing the words ''§ 301.75–11(d)'' and adding the words ''part 305 of this chapter'' in their place; and paragraph (b)(5) is amended by removing the words ''§ 301.75–11(c)'' and adding the words ''part 305 of this chapter'' in their place.

§ 301.75–7 [Amended]

7. In § 301.75–7, paragraphs (a)(3), (c)(1)(ii), and (c)(2)(v) are amended by removing the words ''§ 301.75–11(a) of this subpart'' and adding the words ''part 305 of this chapter'' in their place; and paragraph (c)(2)(iv) is amended by removing the words ''§ 310.75–11(d) of this subpart'' and adding the words ''part 305 of this chapter'' in their place.

§ 301.75–8 [Amended]

8. In § 301.75–8, paragraph (b) is amended by removing the words ''§ 301.75–11(b) of this subpart'' and adding the words ''part 305 of this chapter'' in their place.

§ 301.75–11 [Removed and Reserved]

9. Section 301.75–11 is removed and reserved.

§ 301.81–4 [Amended]

10. Section 301.81–4 is amended as follows:

a. In paragraph (a)(2)(iii), by removing the words ''the methods and procedures prescribed in the Appendix to this subpart (''III. Regulatory Procedures'')'' and adding the words ''part 305 of this chapter'' in their place.

b. In paragraph (b), by removing the words ''the methods and procedures prescribed in the Appendix to this subpart (''III. Regulatory Procedures''), or in accordance with the methods and procedures prescribed in''.

11. Section 301.81–5 is amended as follows:

a. In paragraph (a)(3)(ii), at the end of the paragraph, by removing the word ''or''.

b. In paragraph (a)(3)(iii), by removing the words ''methods and procedures prescribed in the Appendix to this subpart (''III. Regulatory Procedures'')'' and adding the words ''part 305 of this chapter'' in their place; and by adding the word ''or'' at the end of the paragraph.

c. By adding a new paragraph (a)(3)(iv) to read as set forth below.

§ 301.81–5 Issuance of a certificate or limited permit.

(a) * * *

(3) * * *

(iv) If the article is containerized nursery stock, it has been produced in accordance with § 301.81–11 of this subpart.

* * * * *

§ 301.81–6 [Amended]

12. Section 301.81–6 is amended by removing the words ''the ''Imported Fire Ant Program Manual,'' as set forth in the appendix to this subpart'' and adding the words ''part 305 of this chapter'' in their place.

13. A new § 301.81–11 is added to read as follows:

§ 301.81–11 Imported fire ant detection, control, exclusion, and enforcement program for nurseries producing containerized plants.

This detection, control, exclusion, and enforcement program is designed to keep nurseries free of the imported fire ant and provides a basis to certify containerized nursery stock for interstate movement. Participating regulated establishments must be operating under a compliance agreement in accordance with § 301.81–6. Such compliance agreements shall state the specific requirements that a shipper agrees to follow to move plants in accordance with the requirements of the program. Certificates and a nursery identification number may be issued to the nursery for use on shipments of regulated articles.

(a) *Detection.* (1) Nursery owners are required to survey visually their entire premises twice monthly for the presence of imported fire ants.

(2) Nurseries participating in this program will be inspected by Federal or State inspectors at least twice per year. More frequent inspections may be necessary depending upon imported fire ant infestation levels immediately surrounding the nursery, the thoroughness of nursery management in maintaining imported-fire-ant-free premises, and the number of previous detections of imported fire ants in or near containerized plants. Inspections by Federal and State inspectors should be more frequent just before and during the peak shipping season. Any nurseries determined during nursery inspections to have imported fire ant colonies must be immediately treated to the extent necessary to eliminate the colonies.

(b) *Control.* Nursery plants that are shipped under this program must originate in a nursery that meets the requirements of this section. Nursery owners must implement a treatment program with registered bait and contact insecticides. The premises, including growing and holding areas, must be maintained free of the imported fire ant. As part of this treatment program, all exposed soil surfaces (including sod and mulched areas) on property where plants are grown, potted, stored, handled, loaded, unloaded, or sold must be treated in accordance with part 305 of this chapter at least once every 6 months. The first application must be performed early in the spring. Followup treatments with a contact insecticide in accordance with part 305 must be applied to eliminate all remaining colonies.

(c) *Exclusion.* (1) For plants grown on the premises, treatment of soil or potting media in accordance with part 305 of this chapter prior to planting is required.

(2) For plants received from outside sources, to prevent the spread into a nursery free of the imported fire ant by newly introduced, infested nursery plants, all plants must be:

(i) Obtained from nurseries that comply with the requirements of this section and that operate under a compliance agreement in accordance with § 301.81–6; or

(ii) Treated upon delivery in accordance with part 305 of this chapter, and within 180 days be either:

(A) Repotted in treated potting soil media;

(B) Retreated in accordance with part 305 of this chapter at 180-day intervals; or

(C) Shipped.

(d) *Enforcement.* (1) The nursery owner must maintain records of the nursery's surveys and treatments for the imported fire ant. These records must be made available to State and Federal inspectors upon request.

(2) If imported fire ants are detected in nursery stock during an inspection by a Federal or State inspector, issuance of certificates for movement will be suspended until necessary treatments are applied and the plants and nursery premises are determined to be free of the imported fire ant. A Federal or State inspector may declare a nursery to be free of the imported fire ant upon reinspection of the premises. This inspection must be conducted no sooner than 30 days after treatment. During this period, certification may be based upon treatments for plants in accordance with part 305 of this chapter.

(3) Upon notification by the department of agriculture in any State of destination that a confirmed imported fire ant infestation was found on a shipment from a nursery considered free of the imported fire ant, the department of agriculture in the State of origin must cease its certification of shipments from that nursery. An investigation by Federal or State inspectors will commence immediately to determine the probable source of the problem and to ensure that the problem is resolved. If the problem is an infestation, issuance of certification for movement on the basis of imported-fire-ant-free premises will be suspended until treatment and elimination of the infestation is completed. Reinstatement into the program will be granted upon determination that the nursery premises are free of the imported fire ant, and that all other provisions of this subpart are being followed.

(4) In cases where the issuance of certificates is suspended through oral notification, the suspension and the reasons for the suspension will be confirmed in writing within 20 days of the oral notification of the suspension. Any person whose issuance of certificates has been suspended may appeal the decision, in writing, within 10 days after receiving the written suspension notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

§ 301.87–5 [Amended]

14. In § 301.87–5, paragraph (a)(1)(i) is amended by removing the words ''§ 301.87–10 of this subpart'' and adding the words ''part 305 of this chapter'' in their place.

§ 301.87–10 [Removed and Reserved]

15. Section 301.87–10 is removed and reserved.

§ 301.89–5 [Amended]

16. In § 301.89–5, paragraph (b) is amended by removing the words ''the methods and procedures prescribed in § 301.89–13'' and adding the words ''part 305 of this chapter'' in their place.

§ 301.89–6 [Amended]

17. In § 301.89–6, paragraph (a)(3)(iii) is amended by removing the words ''methods and procedures prescribed in § 301.89–13'' and adding the words ''part 305 of this chapter'' in their place.

§ 301.89–7 [Amended]

18. Section 301.89–7 is amended by removing the citation ''§ 301.89–13'' and adding the words ''part 305 of this chapter'' in its place.

§ 301.89–12 [Amended]

19. In § 301.89–12, paragraphs (a), (b), and (c) are amended by removing the citation ''§ 301.89–13'' and adding the words ''part 305 of this chapter'' in its place.

§ 301.89–13 [Removed and Reserved]

20. Section 301.89–13 is removed and reserved.

§ 301.92–5 [Amended]

21. In § 301.92–5, paragraph (a)(1)(i) is amended by removing the words ''§ 301.92–10 or''.

§ 301.92–10 [Removed and Reserved]

22. Section 301.92–10 is removed and reserved.

23. Part 305 is revised to read as follows:

PART 305—PHYTOSANITARY TREATMENTS

Sec.

305.1 Definitions.
305.2 Approved treatments.
305.3 Processes for adding, revising, or removing treatment schedules.
305.4 Monitoring and certification of treatments.
305.5 Chemical treatment requirements.
305.6 Cold treatment requirements.
305.7 Quick freeze treatment requirements.
305.8 Heat treatment requirements.
305.9 Irradiation treatment requirements.

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.

§ 305.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person delegated to act for the Administrator in matters affecting this part.

APHIS. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

Cold treatment. Exposure of a commodity to a specified cold temperature that is sustained for a specific time period to kill targeted pests, especially fruit flies.

Dose mapping. Measurement of absorbed dose within a process load using dosimeters placed at specified locations to produce a one-, two-, or three-dimensional distribution of absorbed dose, thus rendering a map of absorbed-dose values.

Dosimeter. A device that, when irradiated, exhibits a quantifiable change in some property of the device that can be related to absorbed dose in a given material using appropriate analytical instrumentation and techniques.

Dosimetry system. A system used for determining absorbed dose, consisting of dosimeters, measurement instruments and their associated reference standards, and procedures for the system's use.

Fumigant. A gaseous chemical that easily diffuses and disperses in air and is toxic to the target organism.

Fumigation. Releasing and dispersing a toxic chemical in the air so that it reaches the target organism in a gaseous state.

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

Irradiation. The use of ionized energy to kill or neutralize organisms.

Methyl bromide. A colorless, odorless biocide used to fumigate a wide range of commodities.

Neutralize. In the case of treatments other than irradiation, to kill a plant pest; in the case of irradiation, to prevent the establishment of the pest by killing it, sterilizing it, or preventing its development from an immature stage into an adult capable of emerging from its host, reproducing, or becoming established.

Plant Protection and Quarantine (PPQ). The Plant Protection and Quarantine program of APHIS.

PPQ Treatment Manual. The document that contains the treatment schedules that are approved for use under this part. The Treatment Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/index.shtml* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

Quick freeze. A commercially acceptable method of quick freezing at subzero temperatures with subsequent storage and transportation at not higher than 20 °F. Methods that accomplish this are known as quick freezing, sharp freezing, cold pack, or frozen pack, but may be any equivalent commercially acceptable freezing method.

Section 18 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). An emergency exemption granted by the U.S. Environmental Protection Agency to Federal or State agencies authorizing an unregistered use of a pesticide for a limited time.

Vacuum fumigation. Fumigation performed in a gas-tight enclosure. Most air in the enclosure is removed and replaced with a small amount of fumigant. The reduction in pressure reduces the required duration of the treatment.

§ 305.2 Approved treatments.

(a) Certain commodities or articles require treatment, or are subject to treatment, prior to interstate movement within the United States or importation or entry into the United States. Treatment is required as indicated in parts 301, 318, and 319 of this chapter, on a permit, or by an inspector.

(b) Approved treatment schedules are set out in the PPQ Treatment Manual. Treatments may only be administered in accordance with the treatment requirements of this part and in accordance with treatment schedules found in the PPQ Treatment Manual.

(c) APHIS is not responsible for losses or damages incurred during treatment and recommends that a sample be treated first before deciding whether to treat the entire shipment.

§ 305.3 Processes for adding, revising, or removing treatment schedules.

(a) *Normal process for adding, revising, or removing treatment schedules.* Unless there is a need to immediately add, revise, or remove a treatment schedule, as provided in paragraph (b)(1) of this section, a treatment schedule may be added to the PPQ Treatment Manual, revised, or removed from the PPQ Treatment Manual as follows:

(1) *Notice of change to treatment schedule.* APHIS will publish in the **Federal Register** a notice describing the reasons we have determined that it is necessary to add, revise, or remove a treatment schedule and, if necessary, making available the new or revised treatment schedule as it would be added to the PPQ Treatment Manual. In our notice, we will provide for a public comment period on the new or revised treatment schedule or on the removal of the treatment schedule from the PPQ Treatment Manual.

(2) *Response to comments.* (i) APHIS will issue a notice after the close of the public comment period indicating that the treatment schedule specified in the initial notice will be added to the PPQ Treatment Manual, revised as described in the notice, or removed from the PPQ Treatment Manual if:

(A) No comments were received on the notice;

(B) The comments on the notice supported our action; or

(C) The comments on the notice were evaluated but did not change our determination that it is necessary to add, revise, or remove the treatment schedule, as described in the notice.

(ii) If the notice issued after the close of the public comment period indicates that a change will be made to the PPQ Treatment Manual, APHIS will make available a new version of the PPQ Treatment Manual that reflects the addition, revision, or removal of the particular treatment schedule.

(iii) If comments present information that causes us to determine that the change described in the notice is not appropriate, APHIS will issue a notice informing the public of this determination after the close of the comment period.

(b) *Process for immediately adding, revising, or removing treatment schedules.* Treatment schedules may be immediately added to the PPQ Treatment Manual, revised, or removed from the PPQ Treatment Manual under the circumstances described in paragraph (b)(1) of this section and in accordance with the process described in paragraphs (b)(2) and (b)(3) of this section.

(1) *Circumstances in which the immediate process may be used.* Treatment schedules may be immediately added to the PPQ Treatment Manual, revised, or removed from the PPQ Treatment Manual if any of the following circumstances apply:

(i) PPQ has determined that an approved treatment schedule is ineffective at neutralizing the targeted plant pest(s);

(ii) PPQ has determined that, in order to neutralize the targeted plant pest(s), the treatment schedule must be administered using a different process than was previously used;

(iii) PPQ has determined that a new treatment schedule is effective, based on efficacy data, and that ongoing trade in a commodity or commodities may be adversely impacted unless the new treatment schedule is approved for use; or

(iv) The use of a treatment schedule is no longer authorized by the U.S. Environmental Protection Agency or by any other Federal entity.

(2) *Process for immediate change to treatment schedules.* If PPQ determines that one or more of the circumstances in paragraph (b)(1) of this section applies and that it is necessary to take immediate action, APHIS will publish in the **Federal Register** a notice describing the reasons we have determined that it is necessary to immediately add, revise, or remove a treatment schedule and, if necessary, making available the new or revised treatment schedule as it has been added to the PPQ Treatment Manual. Treatment schedules that have been added to the PPQ Treatment Manual or revised under this process will be listed in a separate section of the PPQ Treatment Manual as having been added or revised through the immediate process described in this paragraph (b). The PPQ Treatment Manual will indicate that these treatment schedules are subject to change or removal based on public comment. In our notice, we will provide for a public comment period on the new or revised treatment schedule or on the removal of the treatment schedule from the PPQ Treatment Manual.

(3) *Response to comments.* (i) APHIS will issue a notice after the close of the public comment period affirming the action described in the initial notice if:

(A) No comments were received on the notice;

(B) The comments on the notice supported our action; or

(C) The comments on the notice were evaluated but did not change our determination that it was necessary to add, revise, or remove the treatment schedule, as described in the notice.

(ii) If the notice issued after the close of the public comment period indicates that the initial change to the PPQ Treatment Manual is affirmed, APHIS will make available a new version of the PPQ Treatment Manual that will reflect the addition, revision, or removal of the particular treatment schedule in the main body of the PPQ Treatment Manual.

(iii) If comments present information that causes us to determine that it is necessary to change a treatment schedule added to the PPQ Treatment Manual under this process or to further revise a treatment schedule that was revised under this process, APHIS will publish a notice in the **Federal Register** informing the public of this determination after the close of the comment period and will revise the treatment schedule accordingly.

(iv) If comments present information that causes us to determine that the change described in the initial notice was not appropriate, APHIS will publish a notice in the **Federal Register** informing the public of this determination after the close of the comment period and will, if necessary, remove the new or revised treatment schedule from the separate section of the PPQ Treatment Manual.

§ 305.4 Monitoring and certification of treatments.

(a) All treatments approved under part 305 are subject to monitoring and verification by APHIS.

(b) Any treatment performed outside the United States must be monitored and certified by an inspector or an official authorized by APHIS. If monitoring and certification involves an official authorized by APHIS, the treated commodities must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country certifying that treatment was conducted in accordance with APHIS regulations. The phytosanitary certificate must be provided to an inspector when the commodity is offered for entry into the United States. During the entire interval between treatment and export, the consignment must be stored and handled in a manner that prevents any infestation by pests and noxious weeds.

§ 305.5 Chemical treatment requirements.

(a) *Certified facility.* The fumigation treatment facility must be certified by APHIS. Facilities are required to be inspected and recertified annually, or as often as APHIS directs, depending upon treatments performed, commodities handled, and operations conducted at the facility. In order to be certified, a fumigation facility must:

(1) Be capable of administering the required dosage range for the required duration and at the appropriate temperature, as specified in the treatment schedules in the PPQ Treatment Manual.

(2) Be adequate to contain the fumigant and be constructed from material that is not reactive to the fumigant.

(3) For vacuum fumigation facilities, be constructed to withstand required negative pressure.

(b) *Monitoring.* Treatment must be monitored by an official authorized by APHIS to ensure proper administration of the treatment, including that the correct amount of gas reaches the target organism and that an adequate number and placement of blowers, fans, sampling tubes, or monitoring lines are used in the treatment enclosure. An official authorized by APHIS approves, adjusts, or rejects the treatment.

(c) *Treatment procedures.* (1) To kill the pest, all chemical applications must be administered in accordance with an Environmental Protection Agency (EPA) approved pesticide label and the APHIS-approved treatment schedule prescribed in the PPQ Treatment Manual. If EPA cancels approval for the use of a pesticide on a commodity, then the treatment schedule prescribed in the PPQ Treatment Manual is no longer authorized for that commodity. If the commodity is not listed on the pesticide label and/or included in a Federal quarantine or crisis exemption in accordance with FIFRA section 18, then no chemical treatment is available.

(2) Temperature/concentration readings must be taken for items known to be sorptive or whose sorptive properties are unknown when treatment is administered in chambers at normal atmospheric pressure.

(3) Unless otherwise specified in the PPQ Treatment Manual, the volume of the commodity stacked inside the treatment enclosure must not exceed ⅔ of the volume of the enclosure. Stacking must be approved by an official authorized by APHIS before treatment begins. All commodities undergoing treatment must be listed on the label or authorized under Section 18 of FIFRA.

(4) Recording and measuring equipment must be adequate to accurately monitor the gas concentration, to ensure the correct amount of gas reaches the pests, and to detect any leaks in the enclosure. At least three sampling tubes or monitoring lines must be used in the treatment enclosure.

(5) An adequate number of blowers or fans must be used inside of the treatment enclosure to uniformly distribute gas throughout the enclosure. The circulation system must be able to recirculate the entire volume of gas in the enclosure in 3 minutes or less.

(6) The exposure period begins after all gas has been introduced.

(7) For vacuum fumigation: The vacuum pump must be able to reduce pressure in the treatment enclosure to 1–2 inches of mercury in 15 minutes or less.

§ 305.6 Cold treatment requirements.

(a) *Approval of treatment facilities.* All facilities or locations used for refrigerating fruits or vegetables in accordance with the cold treatment schedules in the PPQ Treatment Manual must be approved by APHIS. Reapproval of the facility or carrier is required every 3 years, or as often as APHIS directs, depending on treatments performed, commodities handled, and operations conducted at the facility. In order to be approved, facilities and carriers must:

(1) Be capable of keeping treated and untreated fruits, vegetables, or other articles separate so as to prevent reinfestation of articles and spread of pests;

(2) Have equipment that is adequate to effectively perform cold treatment.

(b) *Places of treatment; ports of entry.* Precooling and refrigeration may be performed prior to, or upon arrival of fruits and vegetables in the United States, provided treatments are performed in accordance with applicable requirements of this section. Fruits and vegetables that are not treated prior to arrival in the United States must be treated after arrival only in cold storage warehouses approved by the Administrator and located in the area north of 39° longitude and east of 104° latitude or at one of the following ports: The maritime ports of Wilmington, NC; Seattle, WA; Corpus Christi, TX; and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; and Hartsfield-Atlanta International Airport, Atlanta, GA.

(c) *Cold treatment enclosures.* All enclosures, in which cold treatment is performed, including refrigerated containers, must:

(1) Be capable of maintaining the treatment temperature specified in the PPQ Treatment Manual before the treatment begins and holding fruit at or below the treatment temperature during the treatment.

(2) Maintain fruit pulp temperatures according to treatment schedules with no more than a 0.39 °C (0.7 °F) variation in temperature.

(3) Be structurally sound and adequate to maintain required temperatures.

(d) *Treatment procedures.* (1) All material, labor, and equipment for cold treatment performed on a vessel must be provided by the vessel or vessel agent. An official authorized by APHIS monitors, manages, and advises in order to ensure that the treatment procedures are followed.

(2) Refrigeration must be completed in the container, compartment, or room in which it is begun.

(3) Fruit that may be cold treated must be safeguarded to prevent cross-contamination or mixing with other infested fruit.

(4) Fruit intended for in-transit cold treatment must be precooled to the temperature at which the fruit will be treated prior to beginning treatment. The in-transit treatment enclosure may not be used for precooling unless an official authorized by APHIS approves the loading of the fruit in the treatment enclosure as adequate to allow for fruit pulp temperatures to be taken prior to beginning treatment. If the fruit is precooled outside the treatment enclosure, an official authorized by APHIS will take pulp temperatures manually from a sample of the fruit as the fruit is loaded for in-transit cold treatment to verify that precooling was completed. If the pulp temperatures for the sample are 0.28 °C (0.5 °F) or more above the temperature at which the fruit will be treated, the pallet from which the sample was taken will be rejected

and returned for additional precooling until the fruit reaches the treatment temperature. If fruit is precooled in the treatment enclosure, or if treatment is conducted at a cold treatment facility in the United States, the fruit must be precooled to the temperature at which it will be treated, as verified by an official authorized by APHIS, prior to beginning treatment.

(5) Breaks, damage, etc., in the treatment enclosure that preclude maintaining correct temperatures must be repaired before the enclosure is used. An official authorized by APHIS must approve loading of compartment, number and placement of temperature probes or sensors, and initial fruit temperature readings before beginning the treatment. Hanging decks and hatch coamings within vessels may not be used as enclosures for in-transit cold treatment without prior written approval from APHIS. Double-stacking of pallets is not allowed.

(6) Only the same type of fruit in the same type of package may be treated together in a container; no mixture of fruits in containers may be treated. A numbered seal must be placed on the doors of the loaded container and may be removed only at the port of destination by an official authorized by APHIS.

(7) Temperature recording devices used during treatment must be password-protected and tamperproof. The devices must be able to record the date, time, and sensor number and automatic and continuous records of the temperature during all calibrations and during treatment. Recording devices must be capable of generating temperature charts for verification by an inspector. If records of calibrations or treatments are found to have been manipulated, the vessel or container in which the treatment is performed may be suspended from conducting cold treatments until proper equipment is installed and an official authorized by APHIS has recertified it. APHIS' decision to recertify a vessel or container will take into account the severity of the infraction that led to suspension.

(8) A minimum of four temperature probes or sensors is required for vessel holds used as treatment enclosures. A minimum of three temperature probes or sensors is required for other treatment enclosures. An official authorized by APHIS will have the option to require that additional temperature probes or sensors be used, depending on the size of the treatment enclosure.

(9) Fruit pulp temperatures must be maintained at the temperature specified in the treatment schedule with no more than a 0.39 °C (0.7 °F) variation in temperature between two consecutive hourly readings. Failure to comply with this requirement will result in invalidation of the treatment unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the duration of the treatment.

(10) The time required to complete the treatment begins when all temperature probes reach the prescribed cold treatment schedule temperature. Refrigeration continues until the vessel arrives at the port of destination and the fruit is released for unloading by an inspector even though this may prolong the period required for the cold treatment.

(11) Temperatures must be recorded at intervals no longer than 1 hour apart. Gaps of longer than 1 hour will invalidate the treatment or indicate treatment failure unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the duration of the treatment.

(12) Cold treatment is not completed until so declared by an official authorized by APHIS or the certifying official of the foreign country; consignments of treated commodities may not be discharged until APHIS clearance has been fully completed, including review and approval of treatment record charts.

(13) Cold treatment of fruits in break bulk vessels or containers must be initiated by an official authorized by APHIS if there is not a treatment technician who has been trained to initiate cold treatments for either break bulk vessels or containers.

(14) An official authorized by APHIS may perform audits to ensure that the treatment procedures comply with the regulations in this section and that the treatment is administered in accordance with the treatment schedules in the PPQ Treatment Manual. The official authorized by APHIS must be given the appropriate materials and access to the facility, container, or vessel necessary to perform the audits.

(15) An inspector will sample and cut fruit from each consignment cold treated for Mediterranean fruit fly (Medfly) to monitor treatment effectiveness. If a single live Medfly in any stage of development is found, the consignment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the safeguards contained in this section do not appear to be effective against the Medfly, APHIS may suspend the importation of fruits from the originating country and conduct an investigation into the cause of the deficiency.

(16) The cold treatments required for the entry of fruit are considered necessary for the elimination of plant pests, and no liability shall attach to the U.S. Department of Agriculture or to any officer or representative of that Department in the event injury results to fruit offered for entry in accordance with these instructions. In prescribing cold treatments of certain fruits, it should be emphasized that inexactness and carelessness in applying the treatments may result in injury to the fruit or its rejection for entry.

(e) *Monitoring.* Treatment must be monitored by an inspector to ensure proper administration of the treatment. An inspector must also approve the recording devices and sensors used to monitor temperatures and conduct an operational check of the equipment before each use and ensure sensors are calibrated. An inspector may approve, adjust, or reject the treatment.

(f) *Compliance agreements.* Facilities located in the United States must operate under a compliance agreement with APHIS. The compliance agreement must be signed by a representative of the cold treatment facility and APHIS. The compliance agreement must contain requirements for equipment, temperature, circulation, and other operational requirements for performing cold treatment to ensure that treatments are administered properly. Compliance agreements must allow officials of APHIS to inspect the facility to monitor compliance with the regulations.

(g) *Workplans.* Facilities located outside the United States may operate in accordance with a bilateral workplan. The workplan, if and when required, must be signed by a representative of the cold treatment facility, the national plant protection organization (NPPO) of the country of origin, and APHIS. The workplans must contain requirements for equipment, temperature, circulation, and other operational requirements for performing cold treatment to ensure that cold treatments are administered properly. Workplans for facilities outside the United States may also include trust fund agreement information regarding payment of the salaries and expenses of APHIS employees on site. Workplans must allow officials of the NPPO and APHIS to inspect the facility to monitor compliance with APHIS regulations.

(h) *Additional requirements for treatments performed after arrival in the United States.*

(1) *Maritime port of Wilmington, NC.* Consignments of fruit arriving at the maritime port of Wilmington, NC, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit must be cold-treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iii) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(iv) The cold treatment facility must remain locked during non-working hours.

(2) *Maritime port of Seattle, WA.* Consignments of fruit arriving at the maritime port of Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iii) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(iv) The cold treatment facility must remain locked during non-working hours.

(v) Black light or sticky paper must be used within the cold treatment facility, and other trapping methods, including APHIS-approved fruit fly traps, must be used within the 4 square miles surrounding the cold treatment facility.

(vi) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(3) *Airports of Atlanta, GA, and Seattle, WA.* Consignments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk and containerized consignments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit arriving for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iii) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of consignments from aircraft to a cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(iv) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(v) The cold treatment facility must remain locked during non-working hours.

(vi) Black light or sticky paper must be used within the cold treatment facility, and other trapping methods, including APHIS-approved fruit fly traps, must be used within the 4 square miles surrounding the cold treatment facility.

(vii) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(4) *Maritime ports of Gulfport, MS, and Corpus Christi, TX.* Consignments of fruit arriving at the ports of Gulfport, MS, and Corpus Christi, TX, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) All fruit entering the port for cold treatment must move in maritime containers. No bulk consignments (those consignments which are stowed and unloaded by the case or bin) are permitted.

(ii) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(iii) All consignments of fruit arriving at the port for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iv) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of consignments from vessel to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(v) Advance reservations for cold treatment space at the port must be made prior to the departure of a consignment from its port of origin.

(vi) Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements:

(A) All containers must be unloaded within the cold treatment facility; and

(B) Untreated fruit may not be exposed to the outdoors under any circumstances.

(vii) The cold treatment facility must remain locked during non-working hours.

(viii) Black lights or sticky paper must be used within the cold treatment facility, and other trapping methods, including APHIS-approved fruit fly traps, must be used within the 4 square miles surrounding the cold treatment facility at the maritime port of Gulfport, MS, and within the 5 square miles surrounding the cold treatment facility at the maritime port of Corpus Christi, TX.

(ix) During cold treatment, a backup system must be available to cold treat the consignments of fruit should the primary system malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruits.

(x) The cold treatment facility must have the ability to conduct methyl bromide fumigations on site.

(xi) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

§ 307.8 Quick freeze treatment requirements.

Quick freeze treatment for fruits and vegetables imported into the United States or moved interstate from Hawaii or Puerto Rico must be conducted in accordance with §§ 319.56–12, 318.13–

4a, or 318.58–4a, respectively. The PPQ Treatment Manual indicates the fruits and vegetables for which quick freeze is an authorized treatment.

§ 305.8 Heat treatment requirements.

(a) *Certified facility.* The treatment facility must be certified by APHIS. Recertification is required annually, or as often as APHIS directs, depending upon treatments performed, commodities handled, and operations conducted at the facility. In order to be certified, a heat treatment facility must:

(1) Have equipment that is capable of adequately circulating air or water (as relevant to the treatment), changing the temperature, and maintaining the changed temperature sufficient to meet the treatment schedule parameters in the PPQ Treatment Manual.

(2) Have equipment used to record, monitor, or sense temperature, maintained in proper working order.

(3) Keep treated and untreated fruits, vegetables, or articles separate so as to prevent reinfestation and spread of pests.

(b) *Monitoring.* Treatment must be monitored by an official authorized by APHIS to ensure proper administration of the treatment. An official authorized by APHIS approves, adjusts, or rejects the treatment.

(c) *Compliance agreements.* Facilities located in the United States must operate under a compliance agreement with APHIS. The compliance agreement must be signed by a representative of the heat treatment facilities located in the United States and APHIS. The compliance agreement must contain requirements for equipment, temperature, water quality, circulation, and other measures for performing heat treatments to ensure that treatments are administered properly. Compliance agreements must allow officials of APHIS to inspect the facility to monitor compliance with the regulations.

(d) *Workplans.* Facilities located outside the United States must operate in accordance with a workplan. The workplan must be signed by a representative of the heat treatment facilities located outside the United States, the national plant protection organization of the country of origin (NPPO), and APHIS. The workplan must contain requirements for equipment, temperature, water quality, circulation, and other measures to ensure that heat treatments are administered properly. Workplans for facilities outside the United States must include trust fund agreement information regarding payment of the salaries and expenses of APHIS employees on site. Workplans must allow officials of the NPPO and APHIS to inspect the facility to monitor compliance with APHIS regulations.

(e) *Treatment procedures.* (1) Before each treatment can begin, an official authorized by APHIS must approve the loading of the commodity in the treatment container.

(2) Sensor equipment must be adequate to monitor the treatment, its type and placement must be approved by an official authorized by APHIS, and the equipment must be tested by an official authorized by APHIS prior to beginning the treatment. Sensor equipment must be locked before each treatment to prevent tampering.

(3) Fruits, vegetables, or articles of substantially different sizes must be treated separately; oversized fruit may be rejected by an official authorized by APHIS.

(4) The treatment period begins when the temperature specified by the treatment schedule has been reached. An official authorized by APHIS may abort the treatment if the facility requires an unreasonably long time to achieve the required temperature.

§ 305.9 Irradiation treatment requirements.

Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for any imported regulated article (i.e., fruits, vegetables, cut flowers, and foliage); for any regulated article moved interstate from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Marianas Islands (referred to collectively, in this section, as Hawaii and U.S. territories); and for any berry, fruit, nut, or vegetable listed as a regulated article in § 301.32–2(a) of this chapter.

(a) *Location of facilities.* (1) Where certified irradiation facilities are available, an approved irradiation treatment may be conducted for any imported regulated article either prior to shipment to the United States or in the United States. For any regulated article moved interstate from Hawaii or U.S. territories, irradiation treatment may be conducted either prior to movement to the mainland United States or in the mainland United States. For articles that are imported or moved interstate from Hawaii or U.S. territories, irradiation facilities may be located in any State on the mainland United States except Alabama, Arizona, California, Florida, Kentucky, Louisiana, Nevada, New Mexico, South Carolina, Tennessee, Texas, and Virginia. In the States of Georgia, Mississippi, and North Carolina, irradiation facilities may only be located at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA, and only if the following special conditions are met: The articles to be irradiated must be imported or moved interstate packaged in accordance with paragraph (f)(3) of this section; the irradiation facility and APHIS must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrive and the irradiation facility; untreated articles may not be removed from their packaging prior to treatment under any circumstances; blacklight or sticky paper must be used within the irradiation facility, and other trapping methods, including APHIS-approved fruit fly traps, must be used within the 4 square miles surrounding the facility; and the facility must have contingency plans, approved by APHIS, for safely destroying or disposing of regulated articles. Prior to treatment, the fruits and vegetables to be irradiated may not move into or through any of the States listed in this paragraph, except that movement is allowed through Dallas/Fort Worth, TX, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route.

(2) For articles that are moved interstate from areas quarantined for fruit flies, irradiation facilities may be located either within or outside of the quarantined area. If the articles are treated outside the quarantined area, they must be accompanied to the facility by a limited permit issued in accordance with § 301.32–5(b) and must be moved in accordance with any safeguards determined to be appropriate by APHIS.

(b) *Approved facilities.* The irradiation treatment facility must be approved by APHIS. In order to be approved, a facility must fulfill the requirements in paragraphs (c) and (d) of this section.

(c) *Compliance agreements*—(1) *Irradiation facilities treating imported articles*—(i) *Compliance agreements with importers and facility operators for irradiation in the United States.* If irradiation of imported articles is conducted in the United States, both the importer and the operator of the irradiation facility must sign compliance agreements with APHIS. In the facility compliance agreement, the facility operator must agree to comply with any additional requirements found necessary by APHIS to prevent the escape, prior to irradiation, of any fruit flies that may be associated with the articles to be irradiated. In the importer compliance agreement, the importer

must agree to comply with any additional requirements found necessary by APHIS to ensure the shipment is not diverted to a destination other than an approved treatment facility and to prevent escape of plant pests from the articles to be irradiated during their transit from the port of first arrival to the irradiation facility in the United States.

(ii) *Compliance agreement with irradiation facilities outside the United States.* If irradiation of imported articles is conducted outside the United States, the operator of the irradiation facility must sign a compliance agreement with APHIS and the national plant protection organization (NPPO) of the country in which the facility is located. In this agreement, the facility operator must agree to comply with the requirements of this section, and the NPPO of the country in which the facility is located must agree to monitor that compliance and to inform the Administrator of any noncompliance.

(2) *Irradiation facilities treating articles moved interstate from Hawaii and U.S. territories.* Irradiation facilities treating articles moved interstate from Hawaii and U.S. territories must complete a compliance agreement with APHIS as provided in § 318.13–3(d) of this chapter.

(3) *Irradiation facilities treating articles moved interstate from areas quarantined for fruit flies.* Irradiation facilities treating articles moved interstate from areas quarantined for fruit flies must complete a compliance agreement with APHIS as provided in § 301.32–6 of this chapter.

(d) *Certified facility.* The irradiation treatment facility must be certified by APHIS. Recertification is required in the event of an increase or a significant decrease in the amount of radioisotope, a major modification to equipment that affects the delivered dose, or a change in the owner or managing entity of the facility. Recertification also may be required in cases where a significant variance in dose delivery has been measured by the dosimetry system. In order to be certified, a facility must:

(1) Be capable of administering the minimum absorbed ionizing radiation doses specified in the PPQ Treatment Manual to the regulated articles; [1]

(2) Be constructed so as to provide physically separate locations for treated and untreated articles, except that articles traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons, or some other means approved during certification to prevent reinfestation of articles and spread of pests.

(3) If the facility is to be used to treat imported articles and is located in the United States, the facility will only be certified if APHIS determines that regulated articles will be safely transported to the facility from the port of arrival without significant risk that plant pests will escape in transit or while the regulated articles are at the facility.

(e) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring will include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation.

(1) *Irradiation facilities located in foreign countries.* Facilities in foreign countries that carry out irradiation operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance workplan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(i) *Irradiation treatment framework equivalency workplan.* The NPPO of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency workplan with APHIS. In this plan, both the NPPO and APHIS will specify the following items for their respective countries:

(A) Citations for any requirements that apply to the importation of irradiated fruits and vegetables;

(B) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and

(C) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(ii) *Facility preclearance workplan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the NPPO of the country from which articles are to be imported must jointly develop a preclearance workplan that details the activities that APHIS and the foreign NPPO will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this workplan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the requirements for separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance workplan will be reviewed and renewed by APHIS and the foreign NPPO on an annual basis.

(iii) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the NPPO of the country in which the irradiation facility is located or a private export group has entered into a trust fund agreement with APHIS. That agreement requires the NPPO or the private export group to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the NPPO or private export group to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the NPPO or the private export group to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the NPPO or the private export group or held on

[1] The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR part 179.

account until needed, at the option of the NPPO or the private export group .

(2) *Irradiation facilities located within the United States.* Facilities located within the United States that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations. Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.[2]

(f) *Packaging.* Articles that are irradiated in accordance with this section must be packaged in cartons in the following manner:

(1) Irradiated articles may not be packaged for shipment in a carton with nonirradiated articles.

(2) For all imported articles irradiated prior to arrival in the United States, all articles moved interstate from Hawaii or U.S. territories and irradiated prior to arrival in the mainland United States, and all regulated articles to be moved interstate from an area quarantined for fruit flies that are treated within the quarantined area:

(i) The fruits and vegetables must be packaged either:

(A) In insect-proof cartons that have no openings that will allow the entry of the pests of concern. The cartons must be sealed with seals that will visually indicate if the cartons have been opened. The cartons may be constructed of any material that prevents entry or oviposition (if applicable) by the pests of concern into the articles in the carton;[3] or

(B) In noninsect-proof cartons that are stored immediately after irradiation in a room completely enclosed by walls or screening that completely precludes access by the pests of concern. If stored in noninsect-proof cartons in a room that precludes access by the pests of concern, prior to leaving the room, each pallet of cartons must be completely enclosed in polyethylene shrink wrap, or another solid or netting covering that completely precludes access to the cartons by the pests of concern.

(ii) To preserve the integrity of treated lots, each pallet-load of cartons containing the fruits and vegetables must be wrapped before leaving the irradiation facility in one of the following ways:

(A) With polyethylene shrink wrap;

(B) With net wrapping; or

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

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

(A) For imported articles that are treated prior to arrival in the United States, pallets that remain intact as one unit until entry into the United States may have one such label per pallet. Pallets that are broken apart into smaller units prior to or during entry into the United States, or that will be broken apart into smaller units after entry into the United States, must have the required label information on each individual carton.

(B) For articles moved interstate from Hawaii or U.S. territories that are treated prior to arrival in the mainland United States, pallets that remain intact as one unit until entry into the mainland United States may have one such label per pallet. Pallets that are broken apart into smaller units prior to or during entry into the mainland United States, or that will be broken apart into smaller units after entry into the mainland United States, must have the required label information on each individual carton.

(3) For all articles imported to be irradiated upon arrival in the United States, moved interstate from Hawaii or U.S. territories to be irradiated upon arrival in the mainland United States, or moved interstate from areas quarantined for fruit flies to be irradiated outside the quarantined area, the articles must be packed in cartons that have no openings that will allow the exit of the pests of concern and that are sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the pests of concern from exiting the carton. Cartons of untreated articles must be shipped in shipping containers sealed prior to their shipment with seals that will visually indicate if the shipping containers have been opened.

(g) *Containers or vans.* Containers or vans that will transport treated commodities must be free of pests prior to loading the treated commodities.

(h) *Certification of treatment for articles treated outside the United States.* For each consignment treated in an irradiation facility outside the United States, a phytosanitary certificate, with the treatment section completed and issued by the NPPO, must accompany the consignment.

(i) *Dosage.* The regulated articles must receive the minimum absorbed ionizing radiation dose specified in the PPQ Treatment Manual.

(j) *Dosimetry systems at the irradiation facility.* (1) Dosimetry must indicate the doses needed to ensure that all the articles will receive the minimum dose prescribed.

(2) The absorbed dose, as measured using an accurate dosimetry system, must meet or exceed the absorbed dose for the pest(s) of concern required by the PPQ Treatment Manual.

(3) When designing the facility's dosimetry system and procedures for its operation, the facility operator must address guidance and principles from the International Standards Organization/American Society for Testing and Materials standard [4] or an equivalent standard recognized by APHIS.

(k) *Records.* An irradiation processor must maintain records of each treated lot for 1 year following the treatment date, and must make these records available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(l) *Request for certification and inspection of facility.* Persons requesting certification of an irradiation treatment facility must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Inspection and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606–5202. The initial request must identify the owner, location, and radiation source of the facility, and the applicant must supply additional information about the facility construction, treatment protocols, and operations upon request by APHIS if APHIS requires additional information to evaluate the request. Before the Administrator determines whether an irradiation facility is eligible for certification, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of this section.

(m) *Denial and withdrawal of certification.* (1) The Administrator will withdraw the certification of any

[2] Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

[3] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Inspection and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606–5202.

[4] Designation ISO/ASTM 51261–2002(E), ''Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing,'' American Society for Testing and Materials, *Annual Book of ASTM Standards.*

irradiation treatment facility upon written request from the irradiation processor.

(2) The Administrator will deny or withdraw certification of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying certification, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend certification pending final determination in the proceeding if he or she determines that suspension is necessary to prevent the spread of any dangerous insect. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(n) *Department not responsible for damage.* This treatment is approved to assure quarantine security against the listed plant pests. From the literature available, the fruits and vegetables authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or monitored. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

(Approved by the Office of Management and Budget under control numbers 0579–0155, 0579–0215, and 0579–0198)

PART 318—STATE OF HAWAII AND TERRITORIES QUARANTINE NOTICES

24. 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.

§ 318.13–3 [Amended]

25. In § 318.13–3, paragraph (b)(2) is amended by removing the words ''approved in'' and adding the words ''approved under'' in their place.

26. Section 318.13–16 is amended as follows:

a. In the table in paragraph (a), by adding, under Hawaii, new entries for litchi and longan to read as set forth below.

b. By adding a new paragraph (b)(1)(ii) to read as set forth below.

§ 318.13–16 Regulated articles allowed interstate movement subject to specified conditions.

(a) * * *

State, territory, or district of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Hawaii				
	Litchi	*Litchi chinensis*	Fruit	(b)(1)(ii), (b)(3)(ii).
	Longan	*Dimocarpus longan*	Fruit	(b)(1)(ii), (b)(3)(ii).
*	*	*	*	* *

(b) * * *

(1) * * *

(ii) May not be moved interstate into Florida. Cartons must be stamped ''Not for movement into or distribution in FL.''

* * * * *

§ 318.13–22 [Amended]

27. Section 318.13–22 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 318.13–22 Bananas from Hawaii.

* * * * *

(b) * * *

(1) The bananas are irradiated in accordance with part 305 of this chapter for the Mediterranean fruit fly (*Ceratitis capitata*), the melon fruit fly (*Bactrocera curcurbitae*), the Oriental fruit fly (*Bactrocera dorsalis*), and the green scale (*Coccus viridis*) and are inspected, after removal from the stalk, in Hawaii and found to be free of the banana moth (*Opogona sacchari* (Bojen)) by an inspector before or after undergoing irradiation treatment; or

(2) The bananas are irradiated in accordance with part 305 of this chapter for the Mediterranean fruit fly (*Ceratitis capitata*), the melon fruit fly (*Bactrocera curcurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*) and are inspected, after removal from the stalk, in Hawaii and found to be free of the green scale (*Coccus viridis*) and the banana moth (*Opogona sacchari* (Bojen)) before or after undergoing irradiation treatment.

* * * * *

28. Section 318.13–25 is revised to read as follows:

§ 318.13–25 Sweetpotatoes from Hawaii.

Sweetpotatoes may be moved interstate from Hawaii in accordance with this section only if the sweetpotatoes meet the conditions in paragraph (a) or paragraph (b) of this section or if the sweetpotatoes are fumigated with methyl bromide in accordance with part 305 of this chapter.

(a) *Vapor heat treatment and inspection.* (1) The sweetpotatoes must be treated with vapor heat in accordance with part 305 of this chapter.

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

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

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

(A) The cartons must have no openings that will allow the entry of the pests of concern and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that

prevents the entry of the pests of concern.[5]

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

(*1*) With polyethylene sheet wrap;

(*2*) With net wrapping; or

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

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

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

(5)(i) *Certification on basis of treatment.* Certification shall be issued by an inspector for the movement of sweetpotatoes from Hawaii that have been treated in accordance with part 305 of this chapter and handled in Hawaii in accordance with this section.

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

(b) *Irradiation treatment and inspection.* (1) The sweetpotatoes must be treated with irradiation in accordance with part 305 of this chapter.

(2) Sweetpotatoes that are not treated with an irradiation dose approved to neutralize the ginger weevil (*Elytrotreinus subtruncatus*) must be sampled, cut, and inspected and found to be free of the ginger weevil by an inspector 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.

(3)(i) To be certified for interstate movement under this paragraph, 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.

(ii) 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.

(Approved by the Office of Management and Budget under control number 0579–0281)

29. A new § 318.13–26 is added to read as follows:

§ 318.13–26 Breadfruit, jackfruit, fresh pods of cowpea, dragon fruit, mangosteen, and moringa pods from Hawaii.

(a) *Breadfruit and jackfruit.* (1) To be eligible for interstate movement, breadfruit and jackfruit from Hawaii must be treated with irradiation in accordance with part 305 of this chapter.

(2) To be certified for interstate movement, 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 a dose approved to neutralize fruit flies. Fruit treated for fruit flies also must either receive a post-harvest dip in accordance with part 305 of this chapter to treat external feeders 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 a dose approved to neutralize all plant pests of the class *Insecta,* except pupae and adults of the order Lepidoptera. 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.*

(3) To be eligible for a limited permit, 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.*

(b) *Fresh pods of cowpea.* (1) To be eligible for interstate movement, fresh pods of cowpea and its relatives from Hawaii must be treated with irradiation in accordance with part 305 of this chapter.

(2) To be certified for interstate movement, 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.

(3) To be eligible for a limited permit, 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.

(c) *Dragon fruit.* To be certified for interstate movement, 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 a dose approved to neutralize fruit flies. Fruit treated for fruit flies also must either receive a post-harvest dip in accordance with part 305 of this chapter to treat external feeders 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 a dose approved to neutralize all plant pests of the class *Insecta,* except pupae and adults of the order Lepidoptera. Regardless of irradiation dose, the fruit must be free of stems and leaves.

(d) *Mangosteen.* To be certified for interstate movement, mangosteen from Hawaii must have the sepals removed

[5] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606.

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 a dose approved to neutralize fruit flies. Fruit treated for fruit flies also must either receive a post-harvest dip in accordance with part 305 of this chapter to treat external feeders 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 a dose approved to neutralize all plant pests of the class *Insecta,* except pupae and adults of the order Lepidoptera. Regardless of irradiation dose, the fruit must be free of stems and leaves.

(e) *Melon.* To be certified for interstate movement, melon from Hawaii must be inspected in Hawaii and found free of spiraling whitefly (*Aleurodicus dispersus*) before undergoing irradiation treatment in Hawaii at a dose approved to neutralize fruit flies. Fruit treated for fruit flies also must either receive a post-harvest dip in accordance with part 305 of this chapter to treat external feeders 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 a dose approved to neutralize all plant pests of the class *Insecta,* except pupae and adults of the order Lepidoptera. Regardless of irradiation dose, melons must be washed to remove dirt and must be free of stems and leaves.

(f) *Moringa pods.* To be certified for interstate movement, 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 a dose approved to neutralize fruit flies. Fruit treated for fruit flies also must either receive a post-harvest dip in accordance with part 305 of this chapter to treat external feeders 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 a dose approved to neutralize all plant pests of the class *Insecta,* except pupae and adults of the order Lepidoptera.

§ 318.47–3 [Amended]

30. In § 318.47–3, paragraph (a) is amended by adding the words ''in accordance with part 305 of this chapter'' after the word ''origin''.

PART 319—[AMENDED]

31. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

32. In § 319.8–23, paragraph (a)(1) is revised to read as follows:

§ 319.8–23 Treatments.

(a)(1) Vacuum fumigation as required in this subpart must be conducted in accordance with part 305 of this chapter.

* * * * *

§ 319.28 [Amended]

33. Section 319.28 is amended as follows:

a. In paragraph (b)(5), by adding the words ''in accordance with part 305 of this chapter'' after the words ''fumigated with methyl bromide''; and by removing the second sentence.

b. In paragraphs (b)(7)(i) and (b)(7)(ii), by removing the words ''paragraph (b)(5) of this section'' and adding the words ''part 305 of this chapter'' in their place.

§ 319.37–13 [Amended]

34. In § 319.37–13, paragraph (c) is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''7 CFR part 305'' in their place.

35. In § 319.40–3, paragraph (b)(1) is revised to read as follows:

§ 319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.

* * * * *

(b) * * *

(1) The wood packaging material must have been treated in accordance with part 305 of this chapter.

* * * * *

36. Section 319.40–5 is amended as follows:

a. In paragraph (b)(1)(i)(C), by removing the citation ''§ 319.40–7(f)(1)'' and adding the words ''part 305 of this chapter'' in its place.

b. In paragraph (b)(1)(iii)(A), by removing the citations ''§ 319.40–7(c)'' and ''§ 319.40–7(d)'' and adding the words ''part 305 of this chapter'' in their place.

c. In paragraph (b)(1)(iii)(C), by removing the citations ''§ 319.40–7(c)'', ''§ 319.40–7(d)'', and ''§ 319.40–7(f)(3)'' each time they occur and adding the words ''part 305 of this chapter'' in their place.

d. In paragraph (b)(2)(i), by removing the citation ''§ 319.40–7(f)(2)'' and adding the words ''part 305 of this chapter'' in its place.

e. In paragraph (b)(2)(ii), by removing the citations ''§ 319.40–7(c)'' and ''§ 319.40–7(d)'' and adding the words ''part 305 of this chapter'' in their place.

f. In paragraph (c)(2), by removing the citation ''§ 319.40–7(f)(1)'' and adding the words ''part 305 of this chapter'' in its place.

g. In paragraph (d), by removing the citation ''§ 319.40–7(f)'' and adding the words ''part 305 of this chapter'' in its place.

h. In paragraph (f), by removing the citation ''§ 319.40–7(c)'' and adding the words ''part 305 of this chapter'' in its place.

i. By revising paragraph (l)(3) to read as set forth below.

j. In paragraph (m)(2)(iv)(A)(*1*), by removing the citation ''319.40–7(f)'' and adding the citation ''part 305'' in its place.

k. In paragraph (m)(2)(iv)(A)(*4*), by removing the citation ''§ 319.40–6'' and adding the words ''7 CFR part 305'' in its place.

l. In paragraph (n)(1)(ii), by removing the citation ''§ 319.40–7(c)'' and adding the words ''part 305 of this chapter'' in its place.

§ 319.40–5 Importation and entry requirements for specific articles.

* * * * *

(l) * * *

(3) Are fumigated in accordance with part 305 of this chapter prior to arrival in the United States.

* * * * *

§ 319.40–6 [Amended]

37. Section 319.40–6 is amended as follows:

a. In paragraph (a), by removing the citation ''§ 319.40–7(c)'' and adding the words ''part 305 of this chapter'' in their place.

b. In paragraphs (b)(1), (b)(1)(i), (b)(1)(ii), (b)(2)(ii), (c)(2)(i)(B), (c)(2)(iii),

(c)(2)(iv), and (d), by removing the citation ''§ 319.40–7(c)'' each time it occurs and adding the words ''part 305 of this chapter'' in its place; and by removing the citation ''§ 319.40–7(d)'' each time it occurs and adding the words ''part 305 of this chapter'' in its place.

c. In paragraph (c)(1)(i)(A), by removing the citation ''§ 319.40–7(e)'' and adding the words ''part 305 of this chapter'' in its place.

d. In paragraphs (c)(2)(i)(B), (c)(2)(iii), (c)(2)(iv), and (d), by removing the citation ''§ 319.40–7(f)(3)'' each time it occurs and adding the words ''part 305 of this chapter'' in its place.

38. Section 319.40–7 is amended as follows:

a. By removing paragraphs (c) through (f).

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

c. By redesignating paragraph (g) as paragraph (d).

§ 319.40–7 Treatments and safeguards.

* * * * *

(c) *Treatments.* Treatment of regulated articles under this subpart must be conducted in accordance with part 305 of this chapter.

* * * * *

§ 319.41–5 [Amended]

39. Section 319.41–5 is amended as follows:

a. In paragraph (a), by removing the words ''other necessary'' and by adding the words ''in accordance with part 305 of this chapter,'' after the word ''treatment''.

b. In paragraphs (b), (c), (d)(1), and (d)(3), by adding the words ''in accordance with part 305 of this chapter'' after the words ''other treatment'' each time they occur.

§ 319.41–5a [Removed]

40. Section 319.41–5a is removed.

§ 319.55–6 [Amended]

41. In § 319.55–6, in paragraph (b)(1), the first sentence is amended by adding the words ''in accordance with part 305 of this chapter'' after the word ''treatment'' the first time it appears.

§ 319.56–3 [Amended]

42. In § 319.56–3, paragraph (c)(2) is amended by removing the citation ''§ 305.15'' and adding the words ''part 305'' in its place.

§ 319.56–7 [Amended]

43. In § 319.56–7, paragraph (b)(1)(ii) is amended by removing the words ''with an approved treatment listed in'' and adding the words ''in accordance with'' in their place.

§ 319.56–11 [Amended]

44. In § 319.56–11, paragraph (b)(1) is amended by removing the words ''with an approved treatment listed in'' and adding the words ''in accordance with'' in their place.

§ 319.56–12 [Amended]

45. Section 319.56–12 is amended by removing the words ''at a temperature not higher than 20 °F during shipping and upon arrival in the United States, and''; and by removing the third sentence.

§ 319.56–13 [Amended]

46. Section 319.56–13 is amended as follows:

a. In paragraph (b)(1)(ii), by removing the words ''an approved treatment listed in''.

b. In paragraphs (b)(5)(xiii) and (b)(5)(xv), by removing the words ''with an approved treatment listed in 7 CFR'' and adding the words ''in accordance with'' in their place; and by adding the words ''of this chapter'' after the words ''part 305''.

§ 319.56–21 [Amended]

47. In § 319.56–21, paragraphs (b)(2) and (d)(2) are amended by removing the words ''an approved treatment listed in''.

48. In § 319.56–22, paragraph (g)(2) is revised to read as follows:

§ 319.56–22 Apples and pears from certain countries in Europe.

* * * * *

(g) * * *

(2) Treatments must be conducted in accordance with part 305 of this chapter.

* * * * *

49. Section 319.56–23 is amended as follows:

a. In footnote 3, by removing the words ''a treatment listed in''.

b. By revising paragraph (f)(2) to read as set forth below.

§ 319.56–23 Apricots, nectarines, peaches, plumcot, and plums from Chile.

* * * * *

(f) * * *

(2) Treatments must be conducted in accordance with part 305 of this chapter.

* * * * *

§ 319.56–38 [Amended]

50. In § 319.56–38, paragraph (d)(4)(ii)(B) is amended by removing the words ''an authorized treatment for the pest is available in'' and adding the words ''a treatment for the pest is authorized by'' in their place.

§ 319.56–46 [Amended]

51. In § 319.56–46, paragraph (a) is amended by removing the words ''by receiving a minimum absorbed dose of 400 Gy'' and adding the words ''for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera'' in their place; and by removing the citation ''§ 305.31'' and adding the words ''part 305'' in its place.

§ 319.56–47 [Amended]

52. Section 319.56–47, is amended as follows:

a. In paragraph (b) by removing the citation ''§ 305.31'' and adding the words ''part 305'' in its place.

b. In paragraph (d) by removing the citation ''§ 305.31'' and adding the words ''part 305 of this chapter'' in its place.

53. In § 319.59–4, paragraph (d)(3) is revised to read as follows:

§ 319.59–4 Karnal bunt.

* * * * *

(d) * * *

(3) Items that require disinfection prior to entry into the United States must be disinfected in accordance with part 305 of this chapter.

* * * * *

54. Section 319.74–2 is amended as follows:

a. In paragraph (c) by removing the paragraph designation (1) following the heading ''Fumigation for agromyziads'' and removing paragraph (c)(2).

b. Redesignating paragraphs (c)(1)(i) and (c)(1)(ii) as paragraphs (c)(1) and (c)(2), respectively.

c. In the newly redesignated introductory text of paragraph (c), by removing the words ''paragraph (c)(2) of this section'' and adding the words ''part 305 of this chapter'' in their place.

d. By revising the first two sentences of paragraph (e) to read as set forth below.

§ 319.74–2 Conditions governing the entry of cut flowers.

* * * * *

(e) *Irradiation.* Cut flowers and foliage that are required under this part to be treated or subjected to inspection to control one or more of the plant pests for which irradiation is an approved treatment under part 305 of this chapter may instead be treated with irradiation. Irradiation treatment must be conducted in accordance with the requirements of part 305 of this chapter. * * *

* * * * *

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

55. The authority citation for part 330 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 330.106 [Amended]

56. In § 330.106, paragraph (a) the fourth sentence is amended by adding the words ''in accordance with part 305 of this chapter'' after the word ''treatment.''

§ 330.300 [Amended]

57. In § 330.300, paragraph (a) is amended by removing the words ''methods of'' and by adding the words ''in accordance with part 305 of this chapter'' after the word ''treatment.''

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

58. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 352.10 [Amended]

59. In § 352.10, paragraph (b)(2)(viii) is amended by adding the words ''in accordance with part 305 of this chapter'' after the word ''treatment.''

§ 352.30 [Amended]

60. In § 352.30, paragraph (a)(4)(iii) is amended by removing the word ''such'' and by adding the word ''any'' in its place; and by adding the words ''in accordance with part 305 of this chapter'' after the word ''treatment.''

Done in Washington, DC, this 28th day of April 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–10188 Filed 5–11–09; 8:45 am]

BILLING CODE 3410–34–P