Proposed Rules

Federal Register
Vol. 73, No. 117
Tuesday, June 17, 2008

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 318

[Docket No. APHIS–2007–0052]

RIN 0579–AC70

Revision of the Hawaiian and Territorial Fruits and Vegetables Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise and reorganize the regulations pertaining to the interstate movement of fruits and vegetables from Hawaii and the territories to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, and make various editorial and nonsubstantive changes to the regulations to make them easier to use. We are also proposing to make substantive changes to the regulations including establishing criteria within the regulations that, if met, would allow us to approve certain new fruits and vegetables for interstate movement in the United States and to acknowledge pest-free areas in Hawaii and U.S. territories expeditiously, and removing the listing in the regulations of some specific commodities as regulated articles. These changes are intended to simplify and expedite our processes for approving certain regulated articles for interstate movement and pest-free areas while continuing to allow for public participation in the processes. This proposal, if adopted, would not allow for the interstate movement of any specific new fruits or vegetables, nor would it alter the conditions for interstate movement of currently approved fruits or vegetables. These proposed changes would make our domestic interstate movement regulations more consistent with our fruits and vegetables import regulations. The proposed changes would not alter the manner in which the risk associated with a regulated article interstate movement request is evaluated, nor would it alter the manner in which those risks are ultimately mitigated.

DATES: We will consider all comments that we receive on or before August 18, 2008.

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–2007–0052* 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–2007–0052, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0052.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in 7 CFR part 318, ''Hawaiian and Territorial Quarantine Notices'' (referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA or the Department) prohibits or restricts the interstate movement of fruits, vegetables, and other products from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam to the continental United States to prevent the spread of plant pests and noxious weeds that occur in Hawaii and the territories.

We are proposing to revise and reorganize those portions of the regulations pertaining to the interstate movement of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, and make various editorial and nonsubstantive changes to the regulations to make them easier to use. We are also proposing to make substantive changes to the regulations including: Establishing criteria within the regulations that, if met, would allow us to approve certain new fruits and vegetables for interstate movement in the United States and to acknowledge pest-free areas in Hawaii and U.S. territories expeditiously; and removing the listing in the regulations of some specific commodities as regulated articles. These changes are intended to simplify and expedite our processes for approving certain regulated articles for interstate movement and pest-free areas while continuing to allow for public participation in the processes. This proposal, if adopted, would not allow for the interstate movement of any specific new fruits or vegetables, nor would it alter the conditions for interstate movement of currently approved fruits or vegetables. These proposed changes would make our domestic interstate movement regulations more consistent with our fruits and vegetables import regulations. The proposed changes would not alter the manner in which the risk associated with a regulated article's interstate movement request is evaluated, nor would it alter the manner in which the risk is ultimately mitigated.

The Current Regulations

Currently, the regulations prohibit the interstate movement of fruits, vegetables, and other products from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam into the continental United States or any other territory or possession of the United States unless the regulations specifically allow the interstate movement of the particular fruit, vegetable, or product.

The regulations are divided into five subparts: Hawaiian Fruits, Vegetables, and Flowers (§§ 318.13 through 318.13–17); Territorial Cotton, Cottonseed, and Cottonseed Products (§§ 318.47 through 318.47–4); Fruits and Vegetables From Puerto Rico or the Virgin Islands (§§ 318.58 through 318.58–16); Sand, Soil, or Earth, with Plants From Territories and Districts (§ 318.60); and Guam (§§ 318.82 through 318.82–3). For the purposes of this proposal, we will focus on three of those subparts: Hawaiian Fruits, Vegetables, and Flowers; Fruits and Vegetables From Puerto Rico or the Virgin Islands; and Guam. The Territorial Cotton, Cottonseed, and Cottonseed Products subpart and Sand, Soil, or Earth, with Plants From Territories and Districts subpart are not addressed in this proposal.

Of the three subparts that are the focus of this proposal, each subpart contains a list of regulated articles from each State or territory, requirements of general applicability, as well as specific requirements regarding certain regulated articles.

As a condition of interstate movement under the regulations, all approved fruits, vegetables, and other products are subject to some type of restriction to ensure that the regulated article does not act as a pathway for the dissemination of plant pests or noxious weeds within the United States. These restrictions are known as phytosanitary measures, and include any activities that have the effect of reducing the plant pest risk posed by a fruit, vegetable, or other product.

Typically, certain products may be moved interstate if the movement is authorized by a limited permit or a valid certificate issued on the basis of inspection and verification of pest freedom or on the basis of treatment. These requirements are considered applicable to the interstate movement of all commodities. A partial list of the commodities that may be moved interstate from Hawaii and from Puerto Rico or the U.S. Virgin Islands under these conditions may be found in §§ 318.13–2 and 318.58–2, respectively. Certain other fruits, vegetables, or products must meet additional requirements to be eligible for movement, including distribution restrictions, packing requirements, and other measures determined to be necessary to mitigate the pest risk posed by the particular regulated article. Requirements for the interstate movement of these commodities can be found in ((318.13–4b through 318.13–4j and §§ 318.58–4a through 318.58–4c.

Proposed Revisions

Reorganization of the Regulations and Consolidation of Similar Provisions

The Hawaii subpart and the Puerto Rico and U.S. Virgin Islands subpart are constructed in a similar manner and, with the exception of commodity-specific sections, each subpart contains the following 17 sections that can be applied to all commodities moving interstate from those areas:

- Notice of quarantine;
- Definitions;
- Conditions of movement;
- Conditions governing the issuance of certificates or limited permits;
- Application for inspection;
- Container marking and identity;
- Products as ships' stores or in the possession of passengers or crew;
- Articles and persons subject to inspection;
- Inspection of means of conveyance;
- Inspection of baggage, other personal effects, and cargo;
- Disinfection of means of conveyance;
- Posting of warning notice and distribution of baggage declarations;
- Movement by the U.S. Department of Agriculture;
- Parcel post inspection;
- Costs and charges;
- Withdrawal of certificates, transit permits, limited permits, or compliance agreements; and
- Transit of fruits and vegetables from Hawaii or the territories into or through the United States.

With the exception of the provisions regarding the posting of warning notices and distribution of baggage declarations, which appear only in the Hawaii subpart, there is little to no variation between the subparts in these 17 sections; any differences are more editorial then substantive. Each subpart also contains commodity-specific instructions for the movement of certain regulated articles. As explained later in this document, if this proposal is adopted, all of those sections would be removed from or relocated in the regulations. (See ''Regulated Article-Specific Provisions'' section later in this document.) While the interstate movement of regulated articles from Guam is covered within the scope of the Guam subpart, that subpart is outdated and most interstate movement requirements for Guam are not accurately reflected in the subpart.

We are proposing to reorganize the regulations by combining the three Hawaiian and territorial subparts into one single subpart, ''Regulated Articles From Hawaii and the Territories'' (§§ 318.13–1 through 318.13–25). In doing so, we would consolidate the generally applicable provisions that now appear in each subpart. We would also explicitly include the Commonwealth of the Northern Mariana Islands (CNMI) within the scope of the regulations and update the regulations to reflect administrative and procedural processes that have been modified or established since we last updated the regulations.

In some cases, we would make no changes to the content of the current sections, but simply change their paragraph and section designations. In other cases, we would amend the text to make the regulations easier to understand, to correct errors, or to update them to reflect current APHIS operating procedures.

In order to facilitate review of this proposal, which, if adopted, would relocate all current provisions to new sections within the regulations, we have prepared a cross-reference table that links the current provisions with the proposed provisions. The cross-reference document may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) and may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. The cross-reference document may also be viewed in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule).

Section-by-Section Discussion of Additional Amendments

Additional proposed amendments to the regulations are discussed below, by proposed section.

Notice of Quarantine (Proposed § 318.13–1)

Proposed § 318.13–1 describes the authority held by the Secretary of Agriculture to regulate the interstate movement of fruits, vegetables, and other regulated articles.[1] Proposed § 318.13–1 would continue to prohibit the interstate movement of fruits and vegetables and associate plants and portions of plants and other regulated articles except as provided in the Hawaii and territorial quarantine regulations or elsewhere in part 318. These proposed provisions were all drawn from and are consistent with those found in the existing Hawaiian and territorial subparts.

[1] The Secretary of Agriculture has delegated authority for the formulation, direction, and supervision of APHIS policies, programs, and activities to the Administrator of APHIS.

Definitions (Proposed § 318.13–2)

Proposed § 318.13–2 contains definitions of terms used in the subpart. All the terms and their definitions were drawn from the existing Hawaiian and territorial subparts; however, we are proposing to make some substantive changes, including revising, adding, and removing certain definitions. Specifically, we are proposing to revise definitions for *fruits and vegetables, interstate,* and *person.* These new definitions would clarify the meaning of those terms in the context of the revised regulations.

We are also proposing to add definitions for *approved growing media, lot, regulated article,* and *soil.* We are proposing to replace the current definition of *certificate* with a definition for *certification.* As explained later in this document under the section titled ''General Requirements for All Regulated Articles (Proposed § 318.13–3),'' the term *certification* more accurately reflects current operating procedures. We are proposing to replace the current definition of *commercial shipment* with a definition of *commercial consignment* in order to eliminate confusion over what constitutes a ''shipment.'' We are also proposing to replace the current definition of *plant litter* with a definition of *plant debris* in order to provide the most up-to-date term. All new and revised definitions may be found in § 318.13–2 in the regulatory text at the end of this document.

We are proposing to remove the definitions for *administrative instructions; cactus plants; cereals; cotton and cotton covers; mango seeds; rice straw; seeds; State, territory, or district of the United States;* and *sugarcane or parts or by-products thereof* because these terms are not used in the proposed new subpart.

General Requirements for All Regulated Articles (Proposed § 318.13–3)

As explained earlier in this document, we are proposing to consolidate all existing general requirements for the interstate movement of regulated articles into § 318.13–3. These requirements include provisions that pertain to:

- Freedom of regulated articles from plant debris;
- Certification;
- Limited permits;
- Compliance agreements;
- Withdrawal of certification, transit permits, limited permits, or compliance agreements;
- Container marking and identity;
- Refusal of entry;
- Costs and charges; and
- Responsibility for damage arising from quarantine actions or procedures.

The current provisions for these requirements are contained in §§ 318.13 through 318.13–4, §§ 318.13–5 through 318.13–17, §§ 318.58 through 318.58–4, §§ 318.58–5 through 318.58–16, § 318.82–2, and § 318.82–3. In consolidating those provisions into a single section, we would set out the general requirements as follows:

Freedom From Plant Debris

Proposed § 318.13–3(a) would require that fruits and vegetables moved interstate from Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, or Guam must be free from plant debris. These proposed provisions are drawn from and are consistent with those found in the existing Hawaiian and territorial subparts.

Certification

Proposed § 318.13–3(b) contains provisions under which certificates or limited permits may be issued for the movement of regulated articles under certain conditions. These proposed provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts. However, while the regulations refer to the issuance of certificates, APHIS inspectors do not issue certificates, but rather stamp shipping boxes and/or containers or accompanying documents with a release stamp as a verification of certification. Therefore, we are proposing to amend the regulations by removing all references to issuing certificates, and we would instead use the term certification.

Limited Permits

Proposed § 318.13–3(c) contains provisions for the issuance of limited permits. These proposed provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Compliance Agreements

Proposed § 318.13–3(d) contains provisions for entering into compliance agreements with APHIS. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts. We are also proposing to require persons wishing to move fruits and vegetables interstate under certain approved notice-based measures to enter into a compliance agreement with APHIS. Specifically, we would require compliance agreements for persons wishing to move fruits and vegetables from fruit fly-free areas, in commercial consignments, or with inspection in the State of origin. The compliance agreement would help APHIS to trace back consignments should problems occur with the shipment as well as to monitor the establishment in which the fruits and vegetables are grown, packed, and otherwise processed.

Attachment of Limited Permit or Verification of Certification

Proposed § 318.13–3(e) contains provisions pertaining to the attachment of certification and limited permits. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Withdrawal of Transit Permits, Limited Permits, or Compliance Agreements

Proposed § 318.13–3(f) contains conditions under which APHIS will withdraw certification, transit permits, limited permits, or compliance agreements. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Container Marking and Identity

Proposed § 318.13–3(g) contains provisions regarding container marking and identity. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Refusal of Entry

Proposed § 318.13–3(h) explains conditions under which APHIS would refuse entry of a regulated article. Specifically, paragraph (h) provides that if an inspector finds that a regulated article is prohibited, or is not accompanied by required documentation, or is so infested with a plant pest or noxious weed that, in the judgment of the inspector, it cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire lot or consignment may be refused movement elsewhere in the United States. This change would clearly state our existing authority in the regulations and would not affect program operations in any way.

Costs and Charges for APHIS Services

Proposed § 318.13–3(i) contains provisions related to costs and charges for APHIS services. These provisions were drawn from and are consistent

with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

APHIS Not Responsible for Damage

Proposed § 318.13–3(j) contains provisions pertaining to responsibility for damages to regulated articles resulting from required treatments. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Approval of Certain Fruits and Vegetables for Interstate Movement (Proposed § 318.13–4)

Under our current process, in order for a fruit or vegetable to be approved for interstate movement from Hawaii, Puerto Rico, Guam, the U.S. Virgin Islands, the Commonwealth of Northern Mariana Islands, or any other territory or possession of the United States, APHIS, after receiving the movement request from a State or territory, first gathers information on the fruit or vegetable and then performs a pest risk analysis. The pest risk analysis usually contains two main components: (1) A risk assessment, to determine what pests of quarantine significance are associated with the fruit or vegetable and which of those are likely to follow the import pathway, and (2) a risk management analysis, to identify phytosanitary measures that could be applied to the fruit or vegetable and evaluate the potential effectiveness of those measures. When the risk analysis is complete, APHIS may then propose to allow the interstate movement of the fruit or vegetable through a proposed rule published in the **Federal Register**. Following its evaluation of public comments on the proposal and any other supporting documentation, APHIS may then issue a final rule that specifically lists the fruit or vegetable, and any applicable phytosanitary measures, in the regulations. The results of a pest risk analysis may also reveal that the risks posed by a fruit or vegetable cannot be sufficiently mitigated for a variety of reasons, and such movement continues to be prohibited. The current process for approving new commodities for interstate movement takes a significant period of time, ranging on average from 18 months to over 3 years (beginning with the initial request and ending with the publication of a final rule).

In a final rule published on July 18, 2007 (72 FR 39482–39528, Docket No. APHIS–2005–0106) and effective on August 17, 2007, we established a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in § 319.56–4(b) of the regulations. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56–3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or
- The fruits or vegetables are imported as commercial consignments only.

In response to comments received on our proposed rule that preceded the July 2007 final rule, and in order to make our domestic regulations consistent with our import regulations, we are proposing to establish a similar regulatory approach that would allow APHIS to approve or reject certain fruits and vegetables for interstate movement from Hawaii and the territories. The process, which would be codified in proposed § 318.13–4, would entail the publication of notices in the **Federal Register** to advise the public of the findings of pest risk analyses and invite comment on those analyses prior to authorizing the interstate movement of any fruit or vegetable. The proposed measures, which are referred to as ''designated measures'' elsewhere in this document, would be similar, but not identical to those which are located in § 319.56–4, given that the proposed designated measures have been modified to account for the differences between interstate movement and importation. For example, in the current Hawaii/territorial regulations, inspectors must certify consignments through inspection or treatment before consignments may move interstate. Therefore, we have included certification as part of two designated measures—treatment and inspection in the State of origin. Also, § 319.56–4 lists inspection upon arrival in the United States as a designated measure for imports. In proposed § 318.13–4 we require that the inspection take place in the State of first arrival, which more accurately reflects the fact that the consignment is already in commerce in the United States. In § 319.56–4, inspection in the country of origin by an inspector or an official of the national plant protection organization (NPPO) of the exporting country is listed as a designated measure, while this proposed rule would provide that inspection and certification take place in the State of origin by an inspector. The inspector could be a State agricultural inspector or an individual authorized by APHIS or the Department of Homeland Security. Finally, § 319.56–4 provides that fruits or vegetables coming from approved pest-free areas be accompanied by a phytosanitary certificate. States do not issue phytosanitary certificates, nor do they issue any comparable document; therefore, the proposed equivalent measure would not provide for the issuance of additional documentation for consignments moving from pest-free areas. The proposed designated measures are as follows:

- Inspection in the first State of arrival and subject to other general requirements of proposed § 318.13–3.
- Origination from a pest-free area in the State of origin in accordance with proposed § 318.13–5.
- Treatment in accordance with part 305 and certification of applied treatment for pest(s).
- Commercial consignments only.
- Inspection and certification that the fruit or vegetable is pest free in the State of origin by an inspector.

This proposed process for approving interstate movement would apply only to fruits and vegetables, not propagative material or other products (i.e., cut flowers, seeds, etc.) that are regulated under 7 CFR part 318. Further, the proposed process would apply only to those fruits and vegetables that, based on the findings of risk analysis, we determine can be safely moved subject to one or more of the designated measures.

We believe the proposed process would measurably speed up the evaluation and approval or denial of requests for interstate movement of fruits and vegetables, while continuing to provide opportunity for public analysis of and comment on the evidence used in our evaluation of the potential pest risks associated with the fruit or vegetable.

In addition to the phytosanitary measures added to the regulations for the notice-based approach in the July

2007 final rule, we have evaluated one additional measure, limited distribution, for the notice-based process in this proposal. Limited distribution would be applied if the results of the pest risk analysis indicated that the risk of introducing specific pests of concern could be mitigated by limiting the geographical area within which the fruit or vegetable could be moved interstate. For example, based on the quarantine pest(s) identified, a pest risk analysis may determine that a mitigation measure should be to limit distribution of the fruit or vegetable to Alaska because the climate there would not be conducive for the particular pest's establishment. There are also box marking requirements that are associated with this measure to ensure that consignments are not misdirected. Using the previous example, we would require the shipping containers be marked as ''For Distribution in Alaska Only.''

We have determined that limited distribution has a good track record of efficacy when used in combination with one or more of the other proposed designated measures. There are a number of regulated articles that currently move from Hawaii under distribution limitations (e.g., litchi and longan may not be moved interstate into Florida, and avocados may only be moved interstate to Alaska). Therefore, we are proposing to include this measure in the list of designated measures in this proposed rule.

The interstate movement of fruits and vegetables that require additional phytosanitary measures beyond one or more of the designated measures cited above would continue to be authorized through specific prior rulemaking. For ease of discussion in this document, we refer to the proposed streamlined process as the ''notice-based process'' and the existing process as the ''rulemaking-based process.'' Note that the determination as to which process to follow (rulemaking or the notice-based process) would be based exclusively on the conclusions of a risk analysis.

Using the proposed notice-based process, when APHIS receives a request from a State Department of Agriculture to allow interstate movement of an additional fruit or vegetable, it would gather information on the fruit or vegetable and conduct a pest risk assessment. When the assessment is complete, if quarantine pests are associated with the fruit or vegetable in the State of origin,[2] we would evaluate whether the risk posed by each quarantine pest can be mitigated by one or more of the designated measures cited previously in this document.[3] If the designated measures alone are not sufficient to mitigate the risk posed by the fruit or vegetable—i.e., if additional risk mitigation is required beyond one or more of the designated phytosanitary measures—any further action on approving the fruit or vegetable for interstate would be undertaken using the rulemaking-based process for authorizing new fruits and vegetables for interstate movement. However, if APHIS determines in a risk management analysis that the risk posed by each identified quarantine pest associated with the fruit or vegetable in the State of origin can be mitigated by one or more of the designated measures, our findings would be communicated using the notice-based process; APHIS would publish in the **Federal Register**, for a public comment period of a minimum of 60 days, a notice announcing the availability of the pest risk analysis. Each pest risk analysis made available for public comment will specify which of the designated phytosanitary measures would be required to be applied by APHIS.

Under the notice-based process, APHIS would evaluate the comments we received in response to our notice of availability of the risk analysis. In the event that we receive no comments, or in the event that commenters do not provide APHIS with information that shows that the conclusions of the pest risk analysis are incorrect and that changes to the pest risk analysis are necessary, APHIS would then publish another notice in the **Federal Register** announcing that the Administrator has determined that, based on the information available, the application of one or more of the designated measures described above (and as specified in a given pest risk analysis) is sufficient to mitigate the risk that plant pests or noxious weeds could be introduced into or disseminated within the United States via the moved fruit or vegetable. APHIS would also respond to all substantive comments received on the initial notice in this second notice. APHIS would begin allowing the interstate movement of the particular fruit or vegetable, subject to the conditions described in the pest risk analysis, beginning on the date the **Federal Register** notice is published.

In the event that commenters provide APHIS with information that shows that changes to the pest risk analysis are necessary, and if the changes made affect the conclusions of the analysis (i.e., that the application of the identified phytosanitary measures will not be sufficient to mitigate the risk posed by the identified pests), APHIS would proceed as follows:

- If additional phytosanitary measures beyond the designated measures described earlier in this document are determined to be necessary to mitigate the risk posed by the particular fruit or vegetable, any further action on the fruit or vegetable would follow the rulemaking-based process.
- If additional risk mitigation measures beyond those evaluated in the pest risk analysis are determined to be necessary, but the added measures still only include one or more of the designated measures described earlier in this document, APHIS may publish another notice announcing that the Administrator has determined that the application of one or more of the designated measures will be sufficient to mitigate the risk that plant pests or noxious weeds could be disseminated within the United States via the interstate movement of the fruit or vegetable. The notice would explain the additional mitigation measures that will be required for the interstate movement of the fruit or vegetable to be authorized and how APHIS made its determination. APHIS would begin allowing the interstate movement for the particular fruit or vegetable, subject to the conditions described in the revised pest risk analysis, beginning on the date specified in the **Federal Register** notice. Alternately, if APHIS believes that the revisions to the pest risk analysis are substantial, and that there may be continued uncertainty as to whether the designated measures are sufficient to mitigate the risk posed by the fruit or vegetable, APHIS may elect to make the revised risk analysis available for public comment via a notice in the **Federal Register**, or may make any further action on approving the fruit or vegetable for interstate movement subject to rulemaking.

Note that APHIS does not set policy or regulatory requirements based on issues of economic competitiveness; our authority is tied to pest risk, and therefore our decisionmaking is based on an analysis of risk. While the proposed process would not preclude

[2] Risk analyses could consider a State or territory, part of a State or territory, or all or parts of several States or territories.

[3] If no quarantine pests are identified in the pest risk analysis as likely to follow the pathway, a detailed risk management analysis would likely not be performed, but the interstate movement of the commodity would still be subject to the general requirements of proposed § 318.13–3.

the submission of comments regarding issues unrelated to risk, comments on issues such as economic competitiveness (e.g., comments that the proposed fruit or vegetable movement would result in decreased sales for continental U.S. producers of the same fruit or vegetable) would not merit a detailed response by APHIS. This proposal would allow APHIS to focus public discussion on the analysis of pest risk, which is the primary basis for our decisionmaking. We believe this policy is consistent with the provisions of the Plant Protection Act.

The notice-based process would employ the use of **Federal Register** notices to communicate APHIS's consideration and approval or denial of requests that were previously only approved via rulemaking. As described above, **Federal Register** notices would be used to announce the availability of pest risk analyses for public comment. **Federal Register** notices would also be used to announce when the Administrator has determined that a particular fruit or vegetable that has been subject to risk analysis and public comment can, based on the findings of pest risk analysis, be approved for interstate movement in the United States. These notices would make clear the conditions under which such movement could occur, and would state that APHIS will immediately begin allowing the interstate movement of the fruit or vegetable. As described later in this document, these notices would also be used to make available any documentation of our consideration of the potential effects of the interstate movement of a fruit or vegetable on the environment, as required under the National Environmental Policy Act, as well as any other analyses determined by APHIS to be necessary under other Federal statutes, such as the Endangered Species Act.

If the notice-based process is adopted for use by APHIS, we would not list commodities approved under this approach in the regulations, though such commodities would be listed in APHIS' Hawaii/CNMI and Puerto Rico/U.S. Virgin Islands fruits and vegetables manuals [4] and the documentation supporting their approval would be made available on the Internet; we also would remove from the regulations those listed commodities that are currently approved for interstate movement subject only to one or more of the designated measures described earlier in this document. Consequently, we would remove the lists of commodities contained in current §§ 318.13–2, 318.13–4b, 318.13–4f, and 318.58–2 and the provisions in § 318.58–4b, ''Irradiation treatment of regulated articles from Puerto Rico and the U.S. Virgin Islands,'' and § 318.13–4c, ''Administrative instructions approving methyl bromide fumigation as a condition for certification of tomatoes for movement from Hawaii.''

We recognize that removing a large number of commodities from the regulations may cause some confusion as to whether a particular fruit or vegetable is approved for interstate movement in the United States, and under what conditions. However, for many years, APHIS has maintained Hawaii/CNMI and Puerto Rico/U.S. Virgin Islands fruits and vegetables manuals that were designed to be a hands-on reference for our inspectors. The manuals are a complete reference for all fruits and vegetables approved for interstate movement from those States and may be viewed on the APHIS Web site at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/hawaii.pdf* and *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/puerto_rico.pdf*. These manuals are frequently used by shippers and other interested persons, in addition to APHIS personnel.

Under this proposal, commodities that have been authorized for interstate movement under the provisions of § 318.13–4 would be added to the manuals for their State or territory of origin, but not the regulations. Furthermore, the manual would list those designated measures that apply to each of those commodities. We also plan to incorporate commodities that have been approved for interstate movement into a searchable database at some point in the future. We are currently developing a database for commodities in our imported fruits and vegetables manual. The new database will allow interested persons to search by regulated article or by country, and will list clearly the conditions that apply to each particular regulated article from a specified country. We envision the database as a comprehensive source for all types of users—inspectors, importers, shippers, and other members of the public.

We would also include in proposed § 318.13–4 provisions that would allow APHIS to amend interstate movement requirements or withdraw approval of particular commodities whose movement is approved under § 318.13–4. Specifically, APHIS could amend interstate movement requirements if we determine that the currently assigned designated phytosanitary measures are not sufficient to mitigate the risk posed by the particular fruit or vegetable. This could occur due to interceptions of new pests in moved fruits or vegetables or evidence of other risks. Under this provision, APHIS would announce that it was prohibiting or further restricting the interstate movement of the particular fruit or vegetable by publishing a notice in the **Federal Register**. In such cases, APHIS would take immediate action as appropriate at ports of entry, and would follow such action as quickly as practicable with notice in the **Federal Register**. The notice would specify the amended interstate movement requirements, provide an effective date for the change, and would invite public comment on the subject. It is likely that most such actions would be effective immediately, in order to address newly identified risks in a timely fashion; however, if there is uncertainty as to the risk posed, APHIS may request comment on a change in interstate movement requirements prior to making such a change effective.

Pest-Free Areas (Proposed § 318.13–5)

Currently, there are no provisions for establishing pest-free areas for Hawaii, Puerto Rico, Guam, the U.S. Virgin Islands, or CNMI. In this document, we are proposing to add a process for establishing pest-free areas and would provide for pest-free areas to be recognized using a notice-based approach. Proposed § 318.13–5, paragraph (a) would provide that APHIS would make a determination of an area's pest-free status based on information provided by the State. The information APHIS would use in its determination would include trapping and surveillance data, survey protocols, and protocols for actions to be taken upon discovery of a pest. If warranted, APHIS would publish a notice in the **Federal Register**, making the information used to make the determination available to the public and solicit comment for 60 days. Following the comment period, if appropriate, APHIS would begin allowing movement of the regulated article from the pest-free area without mitigations for the particular pest because:

1. No comments were received on the notice or

2. The comments on the notice did not affect the overall conclusions of the

[4] Currently, APHIS does not maintain a fruits and vegetables manual for Guam because there are no regulated articles being moved from Guam (see proposed § 318.13–17 ''Regulated articles from Guam''). If as a result of this proposed rule, it becomes necessary to maintain a list of fruits and vegetables from Guam outside of the regulations, APHIS would list such information on the PPQ Internet Web site.

notice and the Administrator's determination of risk.

A comprehensive list of pest-free areas would be made available by APHIS on the Internet, but no such list would be contained in the regulations. Rather, the regulations would simply identify the standards an area must meet to be considered pest free, as shown in proposed § 318.13–5.

In conjunction with this proposed change, we would also include a provision in proposed § 318.13–5 regarding how we would acknowledge the decertification of pest-free areas. Specifically, paragraph (d) of that section would provide that in the event of pest infestation in an approved pest-free area, APHIS will publish in the **Federal Register** a notice announcing that the pest-free status of the area in question has been withdrawn, and that movement of host crops for the pest in question are subject to additional mitigations, if any exist. If an alternative mitigation for the pest is not available, the interstate movement would be prohibited. In order for a decertified pest-free area to be reinstated, a State would have to submit new information supporting its pest-free status as discussed in paragraph (b) of this section to be approved by APHIS.

Paragraph (e) would set forth general requirements for the interstate movement of regulated articles from pest-free areas in Hawaii, Puerto Rico, Guam, CNMI, or the U.S. Virgin Islands. Specifically, paragraph (e) would provide that each box of fruits or vegetables that is moved interstate from a pest-free area under this subpart be labeled with the name of the orchard or grove or origin, or the name of the grower; the name of the municipality and State or territory in which the fruits or vegetables were produced; and the type and amount of fruit the box contains. Paragraph (e) would further provide that persons wishing to move fruits or vegetables from Hawaii, Puerto Rico, Guam, CNMI, or the U.S. Virgin Islands enter into a compliance agreement with APHIS in accordance with the provisions for compliance agreements in § 318.13–3(d). Finally, paragraph (e) would require that fruits or vegetables moved from a pest-free area into or through a non-free area be safeguarded during the time they are present in a non-free area by insect-proof mesh screens or plastic tarpaulins, including while in transit to the packinghouse and while awaiting packaging. Further, we would require fruits or vegetables that are moved through a non-free area during transit to a port to be packed in insect-proof cartons or containers or be covered by insect-proof mesh or plastic tarpaulins during transit to the port and subsequent movement to the continental United States. These safeguards would provide necessary protection of commodities moved interstate against pest infestation while they are in transit through the United States and are consistent with standard operating procedures of all current programs for the export of fruits or vegetables from foreign pest-free areas.

General Requirements

Transit of Regulated Articles From Hawaii or the Territories Into or Through the Continental United States (Proposed § 318.13–6)

Proposed § 318.13–6 contains provisions for fruits and vegetables from Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, and Guam to transit through the United States en route to another country. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Products as Ships' Stores or in the Possession of Passengers or Crew (Proposed § 318.13–7)

Proposed § 318.13–7 contains provisions for certain regulated articles from Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, and Guam to be moved interstate as ships' stores or in the possession of passengers and crew on ships. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Articles and Persons Subject to Inspection (Proposed § 318.13–8)

Proposed § 318.13–8 contains provisions related to the inspection of persons, means of conveyance, baggage, cargo, and any other articles destined for movement from Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, and Guam to a destination elsewhere in the United States. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Inspection and Disinfection of Means of Conveyance (Proposed § 318.13–9)

Proposed § 318.13–9 contains provisions for inspecting aircraft prior to departure from Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, and Guam; inspection of aircraft moving to Guam; and inspection of ships upon arrival in the United States. Proposed § 318.13–9 also contains provisions for disinfecting means of conveyance. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Inspection of Baggage, Other Personal Effects, and Cargo (Proposed § 318.13–10)

Proposed § 318.13–10 contains provisions for inspecting aircraft passengers, aircraft crew, persons traveling to Guam, persons traveling by ship as well as provisions for accepting baggage and loading on aircraft, loading of certain cargoes, removing certain cargoes in Guam, and providing space and facilities for baggage and cargo inspection. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Posting of Warning Notice and Distribution of Baggage Declarations (Proposed § 318.13–11)

Proposed § 318.13–11 contains provisions for distributing baggage declarations to passengers on aircrafts, ships, vessels, or other surface craft moving to Guam, CNMI, or American Samoa. In addition, proposed § 318.13–11 contains requirements for posting warning notices directing attention to the regulations in the Hawaii and territorial subparts on docks, harbors, or landing fields in Hawaii, Puerto Rico, Guam, CNMI, or the U.S. Virgin Islands. These provisions were drawn from and are consistent with the provisions that appear in the corresponding section in the Hawaii subpart; except that we are proposing to amend some of those provisions to reflect current APHIS practices. Specifically, we are proposing to amend those provisions to require that baggage declarations be distributed to passengers on aircraft, ships, vessels, or other surface crafts moving to Guam, CNMI, or American Samoa. Hawaii does not distribute baggage declarations to passengers on all outgoing aircraft, ships, vessels, or other surface crafts; therefore we are also proposing to remove those requirements. Paragraph (b) of § 318.13–12 of the current regulations contains instructions for posting warning notices in docks, harbors, or landing fields in Hawaii, which direct the passengers' attention to the quarantine and regulations in 7 CFR part 318. We would not include footnotes 5 and 6 in proposed § 318.13–11 because the footnotes reference form PPQ 232, which no longer exists.

Movement by the U.S. Department of Agriculture (Proposed § 318.13–12)

Proposed § 318.13–12 contains provisions under which the USDA may move articles whose interstate movement is otherwise prohibited or restricted to move interstate from Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, or Guam. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Movement of Frozen Fruits and Vegetables (Proposed § 318.13–13)

Proposed § 318.13–13 provides conditions under which frozen fruits and vegetables may be certified for interstate movement from Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, or Guam. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Movement of Processed Fruits, Vegetables, and Other Products (Proposed § 318.13–14)

The Hawaii/territorial fruits and vegetables manuals currently place restrictions on the interstate movement of processed fruits, vegetables, and other products from those areas; however, there are no corresponding requirements in the regulations. In this document, we are proposing to add general requirements regarding the interstate movement of processed products from Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, and Guam in proposed § 318.13–14. Specifically, proposed § 318.13–14(a) would provide that fruits, vegetables, and other products that are processed sufficiently as to preclude the survival of any live pests can be moved interstate from Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, and Guam. A listing of processed products that are currently approved for interstate movement from those States can be found in the Hawaii/territorial manuals. Proposed paragraph (b) of this section provides that consignments of dried fruits, vegetables, or other products that are capable of harboring fruit flies will be subject to the same interstate movement conditions that apply to the fruit or vegetable in its unprocessed state.

Parcel Post Inspection (Proposed § 318.13–15)

Proposed § 318.13–15 provides conditions under which inspectors are authorized to inspect parcel post packages placed in the mail in Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, or Guam. These provisions were drawn from and are consistent with the provisions that appear in the corresponding sections of each of the Hawaiian and territorial subparts.

Regulated Articles Allowed Interstate Movement Subject to Specific Conditions (Proposed § 318.13–16)

Currently, the regulations contain provisions for interstate movement of certain regulated articles from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam to other locations in the United States subject to inspection and other requirements. As explained elsewhere in this document, most such commodities would no longer be listed in the regulations under this proposal. However, as also explained earlier in this document, some commodities listed in the current regulations are allowed interstate movement subject to additional measures beyond the designated measures used in the notice-based process. We are proposing to list those commodities, and any requirements that apply to their interstate movement beyond the general requirements of § 318.13–3, in proposed § 318.13–16. Such commodities would remain subject to the same restrictions that currently apply to their interstate movement. In some cases, restrictions that apply to the movement of specific fruits, vegetables, and other products from Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, and Guam are contained in each State's respective fruits and vegetables manual, but not in the regulations. Consequently, we are proposing to add some commodities to the regulations that are currently listed, along with applicable movement restrictions, only in one of those manuals. A table with those commodities and the location of their current interstate movement requirements follows. See proposed § 318.13–16 for a list of commodities and applicable requirements. Authorization of additional commodities subject to any of these additional measures or measures other than the designated measures described earlier in this document would continue to require prior specific rulemaking.

State of origin	Common name	Botanical name	Location of current interstate movement requirements
Hawaii	Bananas	*Musa* spp.	Hawaii/CNMI fruits and vegetables manual ("Additional fruits and vegetables approved for movement from Hawaii to Alaska only" table on page 6–13).
	Edible flowers (Pot marigold, johnny-jump-ups, pansies, and violets).	*Calendula* spp.	Hawaii/CNMI fruits and vegetables manual (page 6–12).
	Pineapple	*Ananas comosus*	Hawaii/CNMI fruits and vegetables manual (page 6–12).
Puerto Rico	Cactus	*Cactaceae*	Puerto Rico/U.S. Virgin Islands fruits and vegetables manual (table 7–3–19).
	Okra	*Abelmoschus escuelentus*.	Puerto Rico/U.S. Virgin Islands fruits and vegetables manual (tables 7–3–1 and 7–3–3).
	Edible flowers (pot marigold, johnny-jump-ups, pansies, and violets).	*Calendula* spp.	Puerto Rico/U.S. Virgin Islands fruits and vegetables manual (table 7–3–1).
U.S. Virgin Islands	Cactus	*Cactaceae*	Puerto Rico/U.S. Virgin Islands fruits and vegetables manual (table 7–3–19) and § 318.58–2(b)(3).
	Okra	*Abelmoschus escuelentus*.	Puerto Rico/U.S. Virgin Islands fruits and vegetables manual (tables 7–3–1 and 7–3–3).
	Edible flowers (pot marigold, johnny-jump-ups, pansies, and violets).	*Calendula* spp.	Puerto Rico/U.S. Virgin Islands fruits and vegetables manual (table 7–3–1).

Regulated Articles From Guam (Proposed § 318.13–17)

Proposed § 318.13–17 contains interstate movement requirements that would apply specifically to regulated articles from Guam. These provisions were drawn from and are consistent with the provisions that appear in the Guam subpart; except that the reference to part 321 would be removed because part 321, ''Restricted Entry Orders,'' has been removed (see 62 FR 50237–50239, Docket No. 97–010–2).

Sections 318.13–18 through 318.13–20 would be reserved to provide additional space in ''Subpart–Hawaiian and Territorial Quarantine Notices'' for future amendments, should such amendments be needed.

Regulated Article-Specific Provisions (Proposed §§ 318.13–21 through 318.13–25)

Sections 318.13–4a through 318.13–4j and §§ 318.58–4a through 318.58–4c contain restrictions on the movement of specific commodities. As explained elsewhere in this document, a number of these sections will be removed if this proposal is adopted. However, all or part of the following sections would be retained under this proposal:

- § 318.13–4d, ''Vapor heat treatment of sweetpotatoes from Hawaii.''
- § 318.13–4g, ''Administrative instructions governing movement of avocados from Hawaii to Alaska.''
- § 318.13–4i, ''Conditions governing the movement of bananas from Hawaii.''
- § 318.13–4j, ''Administrative instructions governing the interstate movement of cut blooms of gardenia from Hawaii.''
- § 318.58–4c, ''Movement of sweetpotatoes from Puerto Rico to certain ports.''

Under this proposal, some or all of the provisions contained in the sections listed above would be relocated to new sections of the proposed regulations, as shown in the cross reference document. As would be the case with requirements of general applicability, we would make no changes to the content of the sections, but simply change paragraph and section designations. In other cases, we are proposing to amend the text to make the regulations easier to understand, to correct errors, or to update them to reflect current APHIS operating procedures. None of these changes would represent a substantive change in interstate movement policy.

Current § 318.13–4d contains restrictions on the interstate movement of sweetpotatoes from Hawaii. Under this proposal, all provisions contained in current § 318.13–4d would be relocated to proposed § 318.13–25, except that the new section would not include a statement that vapor heat treatment is an authorized treatment for sweetpotatoes from Hawaii, as part 305 already lists vapor treatment as an approved treatment.

Current § 318.13–3(b)(1) contains conditions governing the interstate movement of cut flowers from Hawaii except for cut blooms and leis of mauna loa and jade vine and except for cut blooms of gardenia not grown in accordance with § 318.13–4j, ''Administrative instructions governing the interstate movement of cut blooms of gardenia from Hawaii.'' Under this proposal, the cut flower-related provisions of § 318.13–3(b)(1) and the conditions for the interstate movement of gardenia in § 318.13–4j would be relocated to proposed § 318.13–23.

Current § 318.13–4i contains conditions governing the interstate movement of bananas from Hawaii, including a requirement that the fruit be safeguarded from fruit fly infestation during transit. Under this proposal, all provisions contained in current § 318.13–4i would be relocated to proposed § 318.13–22, except that the new section would specifically provide that bananas being moved interstate must be safeguarded from fruit fly infestation by being covered with insect-proof packaging, such as insect-proof mesh screens or plastic tarpaulins. This change is necessary to clarify the safeguarding requirement in this section.

Current § 318.58–4c contains conditions governing the interstate movement of sweetpotatoes from Puerto Rico. The current regulations provide that the fields in which sweetpotatoes have been grown must be treated with an approved soil insecticide and that before planting in treated fields, the sweetpotato draws and vine cuttings must be dipped in an approved insecticidal solution. Under this proposal, all provisions contained in current § 318.58–4c would be relocated to proposed § 318.13–24, except that we would clarify that the soil insecticide and insecticidal solution must be approved by APHIS.

Miscellaneous Changes

In addition to the changes described elsewhere in this document, we propose to update references to contact points for APHIS program units as appropriate. We would also update, as necessary, various references to sections of the fruits and vegetables regulations located elsewhere in 7 CFR chapter III.

Executive Order 12866 and Regulatory Flexibility Act

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

We have prepared an initial regulatory flexibility analysis that considers the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available from the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. APHIS–2007–0052 when requesting copies. The full analysis is also available on the Regulations.gov Web site and in our reading room (instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this document).

This proposed rule would revise and reorganize the regulations pertaining to the interstate movement of fruits and vegetables from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam. This would be done to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, make various editorial and nonsubstantive changes to the regulations to make them easier to use, and expand their applicability to include the CNMI and all other territories and possessions of the United States.

APHIS is also proposing to make substantive changes to the regulations. This proposed rule would establish criteria within the regulations that, if met, would allow APHIS to approve certain fruits and vegetables for interstate movement and to acknowledge pest-free areas in Hawaii and U.S. territories without undertaking rulemaking. Currently, these commodities may only be brought into the continental United States after completion of a pest risk analysis, risk management document, and rulemaking, if the commodities are not currently included on the list of regulated articles. A similar type of notice-based procedure has been implemented by APHIS for approving imports. Implementing this rule would establish a similar approach for authorizing the interstate movement of certain fruits and vegetables and other

articles. This proposed rule would also result in certain regulated articles no longer being listed in the regulations. These changes would simplify and expedite the APHIS processes for approving certain regulated articles for interstate movement and pest-free areas while continuing to allow for public participation in the process.

APHIS expects little impact on the total supply of fruits and vegetables available in the continental United States, and little change in the movement of fruits and vegetables from Hawaii and the territories; effects on U.S. producers, marketers, and consumers are expected to be small. The main provision of this proposed rule represents a structural revision of the regulations pertaining to the movement of fruits and vegetables from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and CNMI, and establishes a new process for approving commodities for movement into the continental United States. However, those commodity movement requests most likely to qualify for the notice-based process are specialty crops having limited markets. The proposed rule would not alter the conditions that apply to currently approved fruits or vegetables.

Of particular note with respect to the approval process, the change would allow a newly approved commodity to move more quickly into commerce to the benefit of consumers and Hawaiian and territorial producers once it has been determined that the commodity can be safely moved interstate subject to one or more designated risk management measures. This proposal, itself, would not allow for the interstate movement of any specific fruits or vegetables, nor would it alter the conditions for interstate movement of currently approved fruits or vegetables except as specifically described in the proposed rule. These proposed changes would not alter the manner in which the risk associated with a commodity interstate movement request is evaluated, nor would it alter the manner in which those risks are ultimately mitigated. Consumers would have quicker access to some fruits and vegetables, while risks would still be evaluated and appropriate mitigations required, as they are currently.

The requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for this rulemaking are met through the following analysis. The economic effects of approving specific commodities for interstate movement using the streamlined approach would not be analyzed at the time of their approval, since such approval would occur without additional rulemaking.

Fruit and Vegetable Production

The fruit and tree nut and the vegetable and melon sectors are vibrant in the United States, for both consumers and producers. The United States is one of the world's leading producers and consumers of vegetables and melons. The annual sale of vegetables and melons earned farmers $17.3 billion on average during 2001–03, more than 8 percent of all farm cash receipts (crops and livestock) and 17 percent of crop receipts. Similarly, the U.S. fruit and tree nuts industry is an important component of the U.S. farm sector. It generated over $12 billion in U.S. farm cash receipts annually in the early 2000s, averaging 6 percent of all farm cash receipts and 12 percent of all crop receipts.

The typical American annually consumes over 280 pounds of fruit and tree nuts (fresh and processed products) each year, ranking third in per capita consumption of major food groups, next to dairy and vegetables. Annual per capita consumption of all vegetables and melons rose 4 percent from 1991–93 to 2001–03, reaching 440 pounds as fresh consumption increased and processed fell. Consumer expenditures for fruit and vegetables are growing faster than for any food group other than meats. Increased domestic and world supplies, rising disposable incomes, and a growing and more culturally diverse population will continue to expand consumer demand for fruits and vegetables in the United States over the next decade. Another important stimulus is continued emphasis on health and nutrition. The fruit and vegetable industries have been very active in promoting the health benefits of fruit and vegetable consumption.

Hawaii and the U.S. territories are important sources of fresh fruits and vegetables for the rest of the United States. In 2002, 666 Hawaiian farms produced more than $55 million in vegetables, melons, potatoes, and sweet potatoes, equal to about 10 percent of total Hawaiian agricultural sales; and 2,582 Hawaiian farms produced more than $179 million in fruits, tree nuts, and berries, accounting for more than 33 percent of total Hawaiian agricultural sales. In 2002, Hawaii ranked seventh among the States in the production of fruits, tree nuts, and berries, and 28th in the production of vegetables, melons, potatoes and sweet potatoes. Hawaii's growers of tropical specialty fruit produced and sold an estimated 1.5 million pounds of fresh fruit in 2005, according to the USDA's National Agricultural Statistics Services (NASS) Hawaii field office. This amount was half again as large as the revised 2004 output of 1 million pounds and the highest on record for fresh tropical specialty fruit since records began to be published for this group.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to evaluate the potential effects of proposed and final rules on small businesses, small organizations, and small governmental jurisdictions.

Description of the Rreasons Why Action by APHIS is Being Considered

This proposed rule would revise and reorganize the regulations pertaining to the interstate movement of fruits and vegetables from Hawaii, Puerto Rico, the U.S. Virgin Islands, CNMI, and Guam to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, and make various editorial and nonsubstantive changes to the regulations to make them easier to use. It would also establish criteria within the regulations that, if met, would allow APHIS to approve certain fruits and vegetables for interstate movement and to acknowledge pest-free areas in Hawaii and U.S. territories without undertaking rulemaking. These changes would simplify the regulations and expedite the APHIS processes for approving certain regulated articles for interstate movement and pest-free areas while continuing to allow for public participation in the process.

Objectives of, and Legal Basis for, the Proposed Rule

By eliminating the need for specific prior rulemaking for commodities for which the notice-based process would be appropriate, considerable time savings could be reaped. The current process for approving fruits and vegetables for interstate movement takes a notable period of time, ranging on average from 18 months to 3 years (beginning with the initial request and ending with the publication of a final rule).

Consumers benefit from the ability to purchase fruits and vegetables from a wide variety of sources. Many of the commodities that are likely to be covered by this rule are niche products, unavailable or limited in availability in the continental United States. This rule would allow producers in Hawaii and the U.S. territories to more quickly meet continental U.S. consumer demand for those niche products. In addition, climate causes most fruit and vegetable production in the continental United

States to be seasonal, with the largest harvests occurring during the summer and fall. Speeding up the process of approving the interstate movement of fruits and vegetables from Hawaii and the U.S. territories would allow continental supplies to be more quickly supplemented, especially of fresh products during the winter; increased choices for consumers and more markets for producers would occur sooner than under the rulemaking process.

The Plant Protection Act (7 U.S.C. 7701 *et seq.*) gives authority to the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed within the United States. The Secretary has delegated this authority to the APHIS Administrator.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

Those entities most likely to be economically affected by the rule are wholesalers and producers of fruits and vegetables. The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small. A firm primarily engaged in wholesaling fresh fruits and vegetables is considered small if it employs not more than 100 persons. In 2002, about 95 percent (4,044 of 4,244) of fresh fruit and vegetable wholesalers in the United States were small by SBA standards.[5] All types of fruit and vegetable farms are considered small if they have annual receipts of $0.75 million or less. With some exceptions, vegetable and melon farms are largely individually owned and relatively small, with two-thirds harvesting fewer than 25 acres. In 2002, between 80 and 84 percent of U.S. vegetable and melon farms were considered small. Similarly, although numbers have declined, fruit and tree nut production is still dominated by small, family, or individually run farm operations. In 2002, between 92 and 95 percent of all fruit and tree nut farms were considered small.[6]

[5] 2002 Economic Census. Department of Commerce. U.S. Bureau of the Census. North American Industry Classification system (NAICS) Category 424480; Fresh fruit & Vegetables wholesalers.

[6] 2002 Census of Agriculture, USDA–NASS. NAICS Categories–1112: Vegetable and melon farming; 1113: Fruit and tree nut farming.

Based on the information that is available, the effects of this rule should be small whether the entity affected is small or large. Those commodity interstate movement requests most likely to qualify for the notice-based process would be for specialty crops with limited markets. This proposal would merely allow certain commodities to move more quickly into interstate commerce to the benefit of consumers and Hawaiian and territorial producers, once it has been determined that the commodity can be safely moved subject to one or more designated risk management measures. Hence, we expect little impact on the total volume of U.S. fruits and vegetables, or on U.S. producers, marketers, and consumers.

Nevertheless, we invite public comment on the proposed rule, including any comment on the expected impacts for small entities, and on how the proposed rule could be modified to reduce expected costs or burdens for small entities consistent with its objectives. Any comment suggesting changes to the proposed criteria should be supported by an explanation of why the changes should be considered.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The proposed rule contains, under the heading ''Paperwork Reduction Act,'' a description of the information collection and recordkeeping requirements associated with the proposed rule.

Duplication, Overlap, or Conflict With Other Federal Rules

APHIS has not identified any duplication, overlap, or conflict of the proposed rule with other Federal rules.

Description of Any Significant Alternatives to the Proposed Rule

An alternative to this rule would be to simply continue under APHIS' current process for authorizing the interstate movement of fruits and vegetables. In this case, we would continue to list all newly approved fruits and vegetables in the regulations through notice-and-comment rulemaking. A notice-based procedure has been implemented by APHIS for approving imports and is working successfully, and we believe a similar process for approving the interstate movement of certain articles would be appropriate. Thus, we believe that maintaining the current process for all regulated articles is unnecessary. We believe that the new approach would enable us to be more responsive to interstate movement requests while maintaining transparent decisionmaking. Therefore this alternative was rejected.

Future Analyses

If this proposed rule is adopted as a final rule, the requirements of Executive Order 12866 or the Regulatory Flexibility Act will be met through the analyses that accompany the final rule. The economic effects of the interstate movement of the specific commodities that are approved using the streamlined approach would not be analyzed at the point of approval, since such approval would occur without additional rulemaking.

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) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

The majority of the regulatory changes proposed in this document are nonsubstantive, and would therefore have no effects on the environment. However, this proposal, if adopted, would allow APHIS to approve certain new articles for interstate movement without undertaking rulemaking. Despite the fact that those fruits and vegetable imports would no longer be contingent on the completion of rulemaking, the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), would still apply. As such, for each additional regulated article approved for interstate movement, APHIS would make available to the public documentation related to our analysis of the potential environmental effects of the interstate movement of new regulated articles. This documentation would likely be made available at the same time and via the same **Federal Register** notice as the risk analysis for the proposed article.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information

collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2007–0052. Please send a copy of your comments to: (1) Docket No. APHIS–2007–0052, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to revise and reorganize the regulations pertaining to the interstate movement of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, and make various editorial and nonsubstantive changes to the regulations to make them easier to use. APHIS is also proposing to make substantive changes to the regulations including: Establishing criteria within the regulations that, if met, would allow us to approve certain new fruits and vegetables for interstate movement in the United States and to acknowledge pest-free areas in Hawaii and U.S. territories expeditiously; and doing away with the practice of listing in the regulations specific commodities as regulated articles. These changes are intended to simplify and expedite our processes for approving certain regulated articles for interstate movement and pest-free areas while continuing to allow for the public participation in the processes.

Implementing this rule will necessitate the use of limited permits, transit permits, compliance agreements, and additional information collection procedures such as inspection/certification, labeling, and trapping surveillance.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

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

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

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

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

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.4280 hour per response.

Respondents: Wholesalers and producers of fruits and vegetables, State officials.

Estimated annual number of respondents: 600.

Estimated annual number of responses per respondent: 33.6666.

Estimated annual number of responses: 20,200.

Estimated total annual burden on respondents: 8,646 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 851–2908.

Lists of Subjects

7 CFR Part 305

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

7 CFR Part 318

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

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

PART 305–PHYTOSANITARY TREATMENTS

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

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

2. In § 305.17, paragraph (a) is revised to read as follows:

§ 305.17 Authorized treatments; exceptions.

(a) Quick freeze is an authorized treatment for all fruits and vegetables imported into the United States or moved interstate from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands, except for those fruits and vegetables listed in paragraph (b) of this section. Quick freeze for fruits and vegetables imported into the United States or moved interstate from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands must be conducted in accordance with § 319.56–12 of this subchapter for imported fruits and vegetables and § 318.13–13 of this subchapter for fruits and vegetables moved interstate.

* * * * *

§ 305.34 [Amended]

In § 305.34, paragraph (b)(2)(iii) is amended by removing the citation ''§ 318.13–4(d)'' and adding the citation ''§ 318.13–3(d)'' in its place.

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

3. 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.

4. Subpart-Hawaiian Fruits, Vegetables, and Flowers, consisting of §§ 318.13 through 318.13–17, is removed and a new Subpart—Regulated Articles From Hawaii and the Territories, §§ 318.13–1 through 318.13–25, is added to read as follows:

Subpart—Regulated Articles From Hawaii and the Territories

Sec.

318.13–1 Notice of quarantine.
318.13–2 Definitions.
318.13–3 General requirements for all regulated articles.
318.13–4 Approval of certain fruits and vegetables for interstate movement.
318.13–5 Pest-free areas.
318.13–6 Transit of regulated articles from Hawaii or the territories into or through the continental United States.

318.13–7 Products as ships' stores or in the possession of passengers or crew.
318.13–8 Articles and persons subject to inspection.
318.13–9 Inspection and disinfection of means of conveyance.
318.13–10 Inspection of baggage, other personal effects, and cargo.
318.13–11 Posting of warning notice and distribution of baggage declarations.
318.13–12 Movement by the U.S. Department of Agriculture.
318.13–13 Movement of frozen fruits and vegetables.
318.13–14 Movement of processed fruits, vegetables, and other products.
318.13–15 Parcel post inspection.
318.13–16 Regulated articles allowed interstate movement subject to specified conditions.
318.13–17 Regulated articles from Guam.
318.13–18 through 318.13–20 [Reserved]
318.13–21 Avocados from Hawaii to Alaska.
318.13–22 Bananas from Hawaii.
318.13–23 Cut flowers from Hawaii.
318.13–24 Sweetpotatoes from Puerto Rico.
318.13–25 Sweetpotatoes from Hawaii.

Subpart—Regulated Articles From Hawaii and the Territories

§ 318.13–1 Notice of quarantine.

(a) Under the authority of section 412 of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the movement in interstate commerce of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

(b) The Secretary has determined that it is necessary to prohibit the interstate movement of cut flowers and fruits and vegetables and plants and portions of plants from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands except as provided in this subpart.

§ 318.13–2 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, or any other employee of APHIS to whom authority has been delegated to act in the Administrator's stead.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture.

Approved growing media. Agar or other translucent tissue culture media, buckwheat hulls, clean ocean sand, excelsior, exfoliated vermiculite, ground cork, ground peat, ground rubber, paper, polymer stabilized cellulose, quarry gravel, sawdust, wood shavings, cork shavings, sphagnum moss, tree fern slab (approved only for orchids), and vegetable fiber (free of pulp) including coconut and osmunda, but excluding cotton and sugarcane.

Certification (certified). A type of authorization, issued by an inspector, evidencing freedom from infestation, to allow the movement of certain regulated articles in accordance with the regulations in this subpart. ''Certified'' shall be construed accordingly.

Commercial consignment. A lot of fruits or vegetables that an inspector identifies as having been produced for sale or distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower and packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Compliance agreement. Any agreement to comply with stipulated conditions as prescribed under § 318.13–3 or § 318.13–4 of this subpart or § 305.34 of this chapter, executed by any person to facilitate the interstate movement of regulated articles under this subpart.

Continental United States. The 48 contiguous States, Alaska, and the District of Columbia.

Cut flower. Any cut blooms, fresh foliage, and dried decorative plant material customarily used in the florist trade and not planting; and being the severed portion of a plant, including the inflorescence, and any parts of the plant attached thereto, in a fresh state.

Disinfection (disinfect and disinfected). The application to parts or all of a ship, vessel, other surface craft, or aircraft of a treatment that may be designated by the inspector as effective against such plant pests as may be present. (''Disinfect'' and ''disinfected'' shall be construed accordingly.)

Fruits and vegetables. A commodity class for fresh parts of plants intended for consumption or processing and not planting.

Inspector. A State agricultural inspector or 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 subpart.

Interstate. From one State into or through any other State; or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Limited permit. A document issued by an inspector or a person operating under a compliance agreement for the interstate movement of regulated articles to a specified destination for:

(1) Consumption, limited utilization or processing, or treatment; or

(2) Movement into or through the continental United States in conformity with a transit permit.

Lot. A number of units of a single commodity, identifiable by its homogeneity of composition and origin, forming all or part of a consignment.

Means of conveyance. A ship, truck, aircraft, or railcar.

Moved (move and movement). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved, directly or indirectly, from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Marina Islands, or the U.S. Virgin Islands into or through the continental United States or any other State or territory of the United States (or from or into or through other places as specified in this subpart). (''Move'' and ''movement'' shall be construed accordingly.)

Packing materials. Any plant or plant product, soil, or other substance associated with or accompanying any commodity or consignment to serve for filling, wrapping, ties, lining, mats, moisture retention, protection, or any other auxiliary purpose. The word ''packing,'' as used in the expression ''packing materials,'' includes the presence of such materials within, in contact with, or accompanying a consignment.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Plant debris. Detached leaves, twigs, or other portions of plants, or plant litter or rubbish as distinguished from approved parts of clean fruits and vegetables, or other commercial articles.

Plant pests. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, nonhuman animal, parasitic plant, bacterium, fungus, virus or viroid, infectious agent or other pathogen, or any article similar to or allied with any of those articles.

Regulated articles. Fruits or vegetables in the raw or unprocessed state; cut flowers; seeds; and plants or plant products for nonpropagative or propagative use.

Sealed (sealable) container. A completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass,

or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that are closed and secured with a lock or seal. Sealed (sealable) containers used for sea consignments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air consigments are distinct and separable from the means of conveyance carrying them before any transloading in the continental United States. Sealed (sealable) containers used for air consignments after transloading in the continental United States or for overland consignments in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself.

Soil. The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

State. Each of the 50 States of the United States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, and all other territories and possessions of the United States.

Transit permit. A written authorization issued by the Administrator for the movement of fruits and vegetables en route to a foreign destination that are otherwise prohibited movement by this subpart into the continental United States. Transit permits authorize one or more consignments over a designated period of time.

Transloading. The transfer of cargo from one sealable container to another, from one means of conveyance to another, or from a sealable container directly into a means of conveyance.

United States. All of the States of the United States, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the U.S. Virgin Islands, and all other territories and possessions of the United States.

§ 318.13–3 General requirements for all regulated articles.

All regulated articles that are allowed movement under this subpart must be moved in accordance with the following requirements, except as specifically provided otherwise in this subpart.

(a) *Freedom from plant debris*. All regulated articles moved under this subpart must be free from plant debris.

(b) *Certification*. Certification may be issued for the movement of regulated articles under the following conditions:

(1) *Certification on basis of inspection or nature of lot involved*. Regulated articles may be certified when they have been inspected by an inspector and found apparently free from infestation and infection, or without such inspection when the inspector determines that the lot for consignment is of such a nature that no danger of infestation or infection is involved.

(i) Persons intending to move any articles that may be certified must contact the local Plant Protection and Quarantine office as far as possible in advance of the contemplated date of shipment in order to request an inspection.

(ii) Persons intending to move any articles that may be certified must prepare, handle, and safeguard such articles from infestation or reinfestation, and assemble them at such points as the inspector may designate, placing them so that inspection may be readily made.

(2) *Certification on basis of treatment*. (i) Regulated articles for which treatments are approved in part 305 of this chapter may be certified if such treatments have been applied in accordance with part 305 of this chapter and if the articles were handled after such treatment in accordance with a compliance agreement executed by the applicant for certification or under the supervision of an inspector.

(ii) Regulated articles certified after treatment in accordance with part 305 of this chapter that are taken aboard any ship, vessel, other surface craft, or aircraft must be segregated and protected in a manner as required by the inspector.

(c) *Limited permits*. (1) Limited permits [1] may be issued by an inspector for the movement of certain noncertified regulated articles to restricted destinations.

(2) Limited permits may be issued by an inspector for the movement of regulated articles that would otherwise be prohibited movement under this subpart, if the articles are to be moved in accordance with § 318.13–6.

(3) Except when the regulations specify that an inspector must issue the limited permit, limited permits may be issued by a person operating under a compliance agreement.

(d) *Compliance agreements*. As a condition for the movement of regulated articles for which a compliance agreement is required, the person entering the compliance agreement must agree to the following:

(1) That he or she will use any permit or certification issued to him or her in accordance with the provisions in the permit, the requirements in this subpart, and the compliance agreement;

(2) That he or she will maintain at his or her establishment such safeguards against the establishment and spread of infestation and infection and comply with such conditions as to the maintenance of identity, handling (including post-treatment handling), and interstate movement of regulated articles and the cleaning and treatment of means of conveyance and containers used in such movement of the articles, as may be required by the inspector in each specific case to prevent the spread of infestation or infection; and

(3) That he or she will allow inspectors to inspect the establishment and its operations.

(e) *Attachment of limited permit or verification of certification*. Except as otherwise provided for certain air cargo and containerized cargo on ships moved in accordance with § 318.13–10, each box, bale, crate, or other container of regulated articles moved under certification or limited permit shall have the limited permit attached to the outside of the container or bear a U.S. Department of Agriculture stamp or inspection sticker verifying that the consignment has been certified in accordance with paragraph (b) of this section: *Provided*, That if a limited permit or certification is issued for a consignment of more than one container or for bulk products, certification shall be stamped on or the limited permit shall be attached to the accompanying waybill, manifest, or bill of lading.

(f) *Withdrawal of certification, transit permits, limited permits, or compliance agreements*. Any certification, transit permit, limited permit, or compliance agreement which has been issued or authorized may be withdrawn by an inspector orally or in writing, if such inspector determines that the holder thereof has not complied with all conditions under the regulations for the use of such document. If the cancellation is oral, the decision and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certification, transit permit, limited permit, or compliance agreement has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certification,

[1] Limited permits can be obtained from each State or territory's local Plant Protection and Quarantine office.

transit permit, limited permit, or compliance agreement was wrongfully withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

(g) *Container marking and identity.* Except as provided in § 318.13–6(c), consignments of regulated articles moved in accordance with this subpart must have the following information clearly marked on each container or on the waybill, manifest, or bill of lading accompanying the articles: Nature and quantity of contents; name and address of shipper, owner, or person shipping or forwarding the articles; name and address of consignee; shipper's identifying mark and number; and the certification stamp or number of the limited permit authorizing movement, if one was issued.

(h) *Refusal of movement.* An inspector may refuse to allow the interstate movement of a regulated article if the inspector finds that the regulated article is prohibited, is not accompanied by required documentation, is so infested with a plant pest or noxious weed that, in the judgment of the inspector, it cannot be cleaned or treated, or contains soil or other prohibited contaminants.

(i) *Costs and charges.* Services of the inspector during regularly assigned hours of duty at the usual places of duty shall be furnished without cost to the one requesting such services. APHIS will not assume responsibility for any costs or charges, other than those indicated in this section, in connection with the inspection, treatment, conditioning, storage, forwarding, or any other operation of any character incidental to the physical movement of regulated articles or plant pests.

(j) *APHIS not responsible for damage.* APHIS assumes no responsibility for any damage to regulated articles that results from the application of treatment or other measures required under this subpart (or under part 305 of this chapter) to protect against the dissemination of plant pests within the United States.

(Approved by the Office of Management and Budget under control number 0579–0088)

§ 318.13–4 Approval of certain fruits and vegetables for interstate movement.

(a) *Determination by the Administrator.* The Administrator has determined that the application of one or more of the designated phytosanitary measures cited in paragraph (b) of this section to certain fruits and vegetables mitigates the risk posed by those commodities, and that such articles may be moved interstate subject to one or more of those measures, as provided in paragraphs (c) and (d) of this section. The name and origin of all fruits and vegetables authorized movement under this section, as well as the applicable requirements for their movement, may be found on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/hawaii.pdf* or *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/puerto_rico.pdf.* Fruits or vegetables that require phytosanitary measures other than one or more of the designated phytosanitary measures cited in paragraph (b) of this section may only be moved in accordance with applicable requirements in § 318.13–3 and regulated article-specific requirements contained elsewhere in this subpart.

(b) *Designated phytosanitary measures.* (1) The fruits and vegetables are inspected in the first State of arrival.

(2) The fruits and vegetables originated from a pest-free area in the State of origin and the grower from which the fruit or vegetable originated has entered into a compliance agreement with the Administrator.

(3) The fruits and vegetables are treated in accordance with part 305 of this chapter and the treatment is certified by an inspector.

(4) The fruits and vegetables articles are inspected and certified in the State of origin by an inspector and have been found free of one or more specific quarantine pests identified by risk analysis as likely to follow the pathway.

(5) The fruits and vegetables are moved as commercial consignments only.

(6) The fruits and vegetables may be distributed only within a defined area and the boxes or containers in which the fruit or vegetables are distributed must be marked to indicate the applicable distribution restrictions.

(c) *Fruits and vegetables authorized for interstate movement under this section.*

(1) *Previously approved fruits and vegetables.* Fruits and vegetables that were authorized movement under this subpart either administratively or by specific regulation as of [*Insert effective date of final rule*] and that were subject only to one or more of the designated phytosanitary measures cited in paragraph (b) of this section and the general requirements of § 318.13–3 may continue to be moved interstate under the same requirements that applied before [*Insert effective date of final rule*], except as provided in paragraph (d) of this section. The interstate movement conditions for those fruits and vegetables that were authorized movement under this subpart subject to additional measures beyond the designated measures in paragraph (b) of this section can be found in § 318.13–16 or one of the commodity-specific sections in this subpart.

(2) *Other fruits and vegetables.* Fruits and vegetables that do not meet the criteria in paragraph (c)(1) of this section may be authorized movement under this section as follows:

(i) *Pest risk analysis.* The risk posed by the particular article from a specified State has been evaluated and publicly communicated as follows:

(A) *Availability of pest risk analysis.* APHIS published in the **Federal Register**, for a public comment period of 60 days, a notice announcing the availability of a pest risk analysis that evaluated the risks associated with the movement of the particular fruit or vegetable.

(B) *Determination of risk; factors considered.* The Administrator determined, and announced in the notice referred to in the previous paragraph, that, based on the information available, the application of one or more of the designated phytosanitary measures described in paragraph (b) of this section is sufficient to mitigate the risk that plant pests or noxious weeds could be introduced into or disseminated elsewhere within the United States by the fruit or vegetable. In order for the Administrator to make the determination described in this paragraph, he or she must conclude based on the information presented in the risk analysis for the fruit or vegetable that the risk posed by each quarantine pest associated with the fruit or vegetable in the State of origin is mitigated by one or more of the following factors:

(1) *Inspection.* A quarantine pest is associated with the fruit or vegetable in the State of origin, but the pest can be easily detected via inspection in the State of first arrival;

(2) *Pest freedom.* No quarantine pests are known to be associated with the fruit or vegetable in the State of origin, or a quarantine pest is associated with the fruit or vegetable in the State of origin but the fruit or vegetable originates from an area that meets the requirements of § 318.13–5 for pest freedom;

(*3*) *Effectiveness of treatment.* A quarantine pest is associated with the fruit or vegetable in the State of origin, but the risk posed by the pest can be

reduced by applying an approved post-harvest treatment to the fruit or vegetable;

(*4*) *Predeparture inspection.* A quarantine pest is associated with the fruit or vegetable in the State of origin, but the fruit or vegetable is subject to predeparture inspection;

(*5*) *Commercial consignments.* A quarantine pest is associated with the fruit or vegetable in the State of origin, but the risk posed by the pest can be reduced by commercial practices.

(*6*) *Limited distribution.* A quarantine pest is associated with the fruit or vegetable in the State of origin, but the risk posed by the pest can be reduced by limiting distribution of the fruit or vegetable and labeling boxes containing the fruit or vegetable with those distribution instructions.

(ii) *Administrator's decision.* The Administrator will announce his or her decision in a subsequent **Federal Register** notice. If appropriate, APHIS would begin allowing the interstate movement of the fruits or vegetables subject to requirements specified in the notice because:

(A) No comments were received on the pest risk analysis;

(B) The comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or

(C) Changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

(d) *Amendment of interstate movement requirements.* If, after [*Insert effective date of final rule*], the Administrator determines that one or more of the designated phytosanitary measures is not sufficient to mitigate the risk posed by any fruit or vegetable authorized interstate movement under this section, APHIS will prohibit or further restrict the interstate movement of the fruit or vegetable pending resolution of the situation. If APHIS concludes that a permanent change to the interstate movement requirements of a particular fruit or vegetable is necessary, APHIS will also publish a notice in the **Federal Register** advising the public of its finding. The notice will specify the amended interstate movement requirements, provide an effective date for the change, and invite public comment on the subject.

§ 318.13–5 Pest-free areas.

Certain fruits or vegetables may be moved interstate provided that the fruits or vegetables originate from an area that is free of a specific pest or pests. In some cases, fruits or vegetables may only be moved interstate if the area of origin is free of all plant pests that attack the fruits or vegetables. In other cases, fruits or vegetables may be moved interstate if the area of origin is free of one or more plant pests that attack the fruit or vegetable and the risk posed by the remaining plant pests that attack the fruit or vegetable is mitigated by other specific phytosanitary measures contained in the regulations in this subpart.

(a) *Application of standards for pest-free areas.* APHIS will make a determination of an area's pest-free status based on information provided by the State. The information used to make this determination will include trapping and surveillance data, survey protocols, and protocols for actions to be performed upon detection of a pest.

(b) *Survey protocols.* APHIS must approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be performed upon detection of a pest. Pest-free areas are subject to audit by APHIS to verify their status.

(c) *Determination of pest freedom.* (1) For an area to be considered free of a specified pest for the purposes of this subpart, the Administrator must determine, and announce in a notice published in the **Federal Register** for 60 days public comment, that the area meets the criteria of paragraphs (a) and (b) of this section.

(2) The Administrator will announce his or her decision in a subsequent **Federal Register** notice. If appropriate, APHIS will allow movement of the regulated article from a pest-free area because:

(i) No comments were received on the notice or

(ii) The comments on the notice did not affect the overall conclusions of the notice and the Administrator's determination of risk.

(d) *Decertification of pest-free areas; reinstatement.* If a pest is detected in an area that is designated as free of that pest, APHIS will publish in the **Federal Register** a notice announcing that the pest-free status of the area in question has been withdrawn and that interstate movement of host crops for the pest in question is subject to application of an approved treatment for the pest. If a treatment for the pest is not available, interstate movement of the host crops would be prohibited. In order for a decertified pest-free area to be reinstated, it would have to meet the criteria of paragraphs (a) through (c) of this section.

(e) *General requirements for the interstate movement of regulated articles from pest-free areas.*

(1) *Labeling.* Each box of fruits or vegetables that is moved interstate from a pest-free area under this subpart must be clearly labeled with:

(i) The name of the orchard or grove of origin, or the name of the grower; and

(ii) The name of the municipality and State or territory in which the fruits or vegetables were produced; and

(iii) The type and amount of fruits or vegetables the box contains.

(2) *Compliance agreement.* Persons wishing to move fruits or vegetables from a pest-free area in Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands must enter into a compliance agreement with APHIS in accordance with § 318.13–3(d).

(3) *Safeguarding.* If fruits or vegetables are moved from a pest-free area into or through an area that is not free of that pest, the fruits or vegetables must be safeguarded during the time they are present in a non-pest-free area by being covered with insect-proof mesh screens or plastic tarpaulins, including while in transit to the packinghouse and while awaiting packaging. If fruits or vegetables are moved through an area that is not free of that pest during transit to a port, they must be packed in insect-proof cartons or containers or be covered by insect-proof mesh or plastic tarpaulins during transit to the port and subsequent movement into or through the United States. These safeguards described in this section must remain intact until the fruits or vegetables reach their final destination.

§ 318.13–6 Transit of regulated articles from Hawaii or the territories into or through the continental United States.

Fruits and vegetables from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands that are otherwise prohibited interstate movement into the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with this section.

(a) *Transit permit.* (1) A transit permit is required for the arrival, unloading, and movement through the continental United States of fruits and vegetables otherwise prohibited by this subpart from being moved through the continental United States from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands. Application for a transit permit may be made in writing or with PPQ Form 586.[2] The transit

[2] PPQ Form 586 can be obtained from PPQ Permit Services or at *http://www.aphis.usda.gov/*

Continued

permit application must include the following information:

(i) The specific types of fruits and vegetables to be shipped (only scientific or English common names are acceptable);

(ii) The means of conveyance to be used to transport the fruit or vegetable through the continental United States;

(iii) The port of arrival in the continental United States, and the location of any subsequent stop;

(iv) The location of, and the time needed for, any storage in the continental United States;

(v) Any location in the continental United States where the fruits or vegetables are to be transloaded;

(vi) The means of conveyance to be used for transporting the fruits or vegetables from the port of arrival in the continental United States to the port of export;

(vii) The estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export;

(viii) The port of export; and

(ix) The name and address of the applicant and, if the applicant's address is not within the territorial limits of the continental United States, the name and address in the continental United States of an agent whom the applicant names for acceptance of service of process.

(2) A transit permit will be issued only if the following conditions are met:

(i) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo will take place and, in the case of air consignments, at any interim stop in the continental United States, as indicated on the application for the transit permit;

(ii) The application indicates that the proposed movement would comply with the provisions in this section applicable to the transit permit; and

(iii) During the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under § 318.13–3(f), unless the transit permit has been reinstated upon appeal.

(b) *Limited permit.* Fruits or vegetables shipped from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands through the continental United States under this section must be accompanied by a limited permit, a copy of which must be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where an air consignment is authorized to stop or where overland consignments change means of conveyance. An inspector will issue a limited permit if the following conditions are met:

(1) The inspector determines that the specific type and quantity of the fruits or vegetables being shipped are accurately described by accompanying documentation, such as the accompanying manifest, waybill, and bill of lading. (Only scientific or English names are acceptable.) The fruits or vegetables shall be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of this section; and

(2) The inspector establishes that the consignment of fruits or vegetables has been prepared in compliance with the provisions of this section.

(c) *Marking requirements.* Each of the smallest units, including each of the smallest bags, crates, or cartons, containing regulated articles for transit through the continental United States under this section must be conspicuously marked, prior to the locking and sealing of the container in the State of origin, with a printed label that includes a description of the specific type and quantity of the fruits or vegetables (only scientific or English common names are acceptable), the transit permit number under which the regulated articles are to be shipped, and, in English, the State in which they were grown and the statement ''Distribution in the United States is Prohibited.''

(d) *Handling of fruits and vegetables.* Fruits or vegetables shipped through the United States from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands in accordance with this section may not be commingled in the same sealed container with fruits or vegetables that are intended for entry and distribution in the United States. The fruits or vegetables must be kept in sealed containers from the time the limited permit required by paragraph (b) of this section is issued, until the fruits or vegetables exit the United States, except as otherwise provided in the regulations in this section. Transloading must be carried out in accordance with the requirements of paragraphs (a), (h), and (i) of this section.

(e) *Area of movement.* The port of arrival, the port of export, ports for air stops, and overland movement within the continental United States of fruits or vegetables shipped under this section is limited to a corridor that includes all States of the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia, except that movement is allowed through Dallas/Fort Worth, TX, as an authorized stop for air cargo, or as a transloading location for consignments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth, TX, into the designated corridor by the shortest route. Movement through the United States must begin and end at locations staffed by APHIS inspectors.

(f) *Movement of regulated articles.* Transportation through the continental United States shall be by the most direct route to the final destination of the consignment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables and set forth in the transit permit. No change in the quantity of the original consignment from that described in the limited permit is allowed. No remarking is allowed. No diversion or delay of the consignment from the itinerary described in the transit permit and limited permit is allowed unless authorized by an APHIS inspector upon determination by the inspector that the change will not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the consignment is diverted is staffed by APHIS inspectors.

(g) *Notification in case of emergency.* In the case of an emergency such as an accident, a mechanical breakdown of the means of conveyance, or an unavoidable deviation from the prescribed route, the person in charge of the means of conveyance must, as soon as practicable, notify the APHIS office at the port where the cargo arrived in the United States.

(h) *Consignments by sea.* Except as authorized by this paragraph, consignments arriving in the United States by sea from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands may be transloaded once from a ship to another ship or, alternatively, once to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export, and must remain in the original sealed container, except under extenuating circumstances and when authorized by an inspector upon determination by the inspector that the transloading would not significantly

plant_health/permits/transit.shtml. Applications for transit permits should be submitted to USDA, APHIS, PPQ Permit Services, 4700 River Road Unit 136, Riverdale, MD 20737 or through e-permits *http://www.aphis.usda.gov/permits/learn_epermits.shtml.*

increase the risk of the introduction of plant pests or diseases into the United States, and provided that APHIS inspectors are available to provide supervision. No other transloading of the consignment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(i) *Consignments by air.* (1) Consignments arriving in the United States by air from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands may be transloaded only once in the United States. Transloading of air consignments must be carried out in the presence of an APHIS inspector. Consignments arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct route to the final destination of the consignment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second air stop within the designated corridor, as authorized in the transit permit and as provided in paragraph (i)(2) of this section. No other transloading of the consignment is allowed, except under extenuating circumstances (*e.g.*, equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the United States, and provided that APHIS inspectors are available to provide supervision. Transloading of air consignments will be authorized only if the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport (i.e., that area of the airport that is open only to personnel authorized by the airport security authorities);

(iii) The area used for any storage is within the secure area of the airport; and

(iv) APHIS inspectors are available to provide the supervision required by paragraph (i)(1) of this section.

(2) Except as authorized by paragraph (f) of this section, consignments that continue by air from the port of arrival in the continental United States may be authorized by APHIS for only one additional stop in the continental United States, provided the second stop is within the designated corridor set forth in paragraph (e) of this section and is staffed by APHIS inspectors. As an alternative to transloading a consignment arriving in the United States into another aircraft, consignments that arrive by air may be transloaded into a truck trailer for export by the most direct route to the final destination of the consignment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second authorized air stop within the designated corridor. No other transloading of the consignment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the United States, and provided that APHIS inspectors are available to provide supervision.

(j) *Duration and location of storage.* Any storage in the United States of fruits or vegetables shipped under this section must be for a duration and in a location authorized in the transit permit required by paragraph (a) of this section. Areas where such fruits or vegetables are stored must be either locked or guarded at all times the fruits and vegetables are present. Cargo shipped under this section must be kept in a sealed container while stored in the continental United States.

(k) *Temperature requirement.* Except for time spent on aircraft and except during storage and transloading of air consignments, the temperature in the sealed containers containing fruits and vegetables moved under this section must be 60 °F or lower from the time the regulated articles leave Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or any other territory or possession of the United States until they exit the United States.

(l) *Prohibited materials.* (1) The person in charge of or in possession of a sealed container used for movement into or through the United States under this section must ensure that the sealed container is carrying only those fruits or vegetables authorized by the transit permit required under paragraph (a) of this section; and

(2) The person in charge of or in possession of any means of conveyance or container returned to the United States without being reloaded after being used to export fruits or vegetables from the United States under this section must ensure that the means of conveyance or container is free of materials prohibited importation into the United States under this chapter.

(m) Authorization by APHIS of the movement of fruits or vegetables through the United States under this section does not imply that such fruits or vegetables are enterable into the destination country. Consignments returned to the United States from the destination country shall be subject to all applicable regulations, including ''Subpart—Fruits and Vegetables'' of part 319 and ''Plant Quarantine Safeguard Regulations'' of part 352 of this chapter.

(n) Any restrictions and requirements with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under this section shall apply to any person who brings into, maintains, unloads, transloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under this section by such a person shall be deemed to be a violation of this section.

(Approved by the Office of Management and Budget under control number 0579–0088)

§ 318.13–7 Products as ships' stores or in the possession of passengers or crew.

(a) *In the possession of passengers or crew members.* Small quantities of fruits, vegetables, or cut flowers subject to the quarantine and regulations in this subpart, when loose and free of packing materials, may be taken aboard any ship, vessel, or other surface craft by passengers or members of the crew without inspection and certification in the State of origin. However, if such articles are not eligible for certification under § 318.13–3, they must be entirely consumed or disposed of before arrival within the territorial waters of the continental United States, Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands.

(b) *As ships' stores or decorations.* Fruits, vegetables, or cut flowers subject to the quarantine and regulations in this subpart may be taken aboard a ship, vessel, or other surface craft in Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the

U.S. Virgin Islands without inspection or certification. Fruits, vegetables, and cut flowers that are so taken aboard such a carrier must be either:

(1) Entirely consumed or removed from the ship, vessel, or other surface craft before arrival within the territorial waters of the continental United States, Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or any other territory or possession of the United States; or

(2) In the case of a surface carrier, retained aboard such carrier under seal or otherwise disposed of subject to safeguards equivalent to those imposed on other prohibited or restricted products by paragraphs (b) and (c) of § 352.10 of this chapter.

§ 318.13–8 Articles and persons subject to inspection.

Persons, means of conveyance (including ships, other ocean-going craft, and aircraft), baggage, cargo, and any other articles, that are destined for movement, are moving, or have been moved from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands to a destination elsewhere in the United States are subject to agricultural inspection at the port of departure, the port of arrival, or any other authorized port. If an inspector finds any article prohibited movement by the quarantine and regulations of this subpart, he or she, taking the least drastic action, shall order the return of the article to the place of origin, or the exportation of the article, under safeguards satisfactory to him or her, or otherwise dispose of it, in whole or part, to comply with the quarantine and regulations of this subpart.

§ 318.13–9 Inspection and disinfection of means of conveyance.

(a) *Inspection of aircraft prior to departure.* No person shall move any aircraft from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands to any other State unless the person moving the aircraft has contacted an inspector and offered the inspector the opportunity to inspect the aircraft prior to departure and the inspector has informed the person proposing to move the aircraft that the aircraft may depart.

(b) *Inspection of aircraft moving to Guam.* Any person who has moved an aircraft from Hawaii, Puerto Rico, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands to Guam shall contact an inspector and offer the inspector the opportunity to inspect the aircraft upon the aircraft's arrival in Guam.

(c) *Inspection of ships upon arrival.* Any person who has moved a ship or other ocean-going craft from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands to any other State shall contact an inspector and offer the inspector the opportunity to inspect the ship or other ocean-going craft upon its arrival.

(d) *Disinfection of means of conveyance.* If an inspector finds that a means of conveyance is infested with or contains plant pests, and the inspector orders disinfection of the means of conveyance, then the person in charge or in possession of the means of conveyance shall disinfect the means of conveyance and its cargo in accordance with an approved method contained in part 305 of this chapter under the supervision of an inspector and in a manner prescribed by the inspector, prior to any movement of the means of conveyance or its cargo.

§ 318.13–10 Inspection of baggage, other personal effects, and cargo.

(a) *Offer for inspection by aircraft passengers.* Passengers destined for movement by aircraft from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands to any other State shall offer their carry-on baggage and other personal effects for inspection at the place marked for agricultural inspections, which will be located at the airport security checkpoint or the aircraft boarding gate, at the time they pass through the checkpoint or the gate. Passengers shall offer their check-in baggage for inspection at agricultural inspection stations prior to submitting their baggage to the check-in baggage facility. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a U.S. Department of Agriculture stamp, inspection sticker, or other identification to such baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Passengers shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a passenger's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The passenger shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the passenger, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(b) *Offer for inspection by aircraft crew.* Aircraft crew members destined for movement by aircraft from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands to any other State, shall offer their baggage and personal effects for inspection at the inspection station designated for the employing airline not less than 20 minutes prior to the scheduled departure time of the aircraft or the rescheduled departure time as posted in the public areas of the airport. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a U.S. Department of Agriculture stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Aircraft crew members shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a crew member's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The crew member shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the crew member, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(c) *Baggage inspection for persons traveling to Guam on aircraft.* No person who has moved from Hawaii, Puerto Rico, or the U.S. Virgin Islands to Guam on an aircraft shall remove or attempt to remove any baggage or other personal effects from the area secured for customs inspections before the person has offered to an inspector, and has had passed by the inspector, his or her baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The person shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall

record the name and address of the person, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(d) *Baggage acceptance and loading on aircraft.* No person shall accept or load any check-in aircraft baggage destined for movement from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands to any other State unless the baggage bears a U.S. Department of Agriculture stamp, inspection sticker, or other indication applied by an inspector representing that the baggage has been inspected and certified.

(e) *Offer for inspection by persons moving by ship.* No person who has moved on any ship or other oceangoing craft from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands to any other territory, State, or District of the United States, shall remove or attempt to remove any baggage or other personal effects from the designated inspection area as provided in paragraph (h) of this section on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and has had passed by the inspector, the baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The person shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the person, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(f) *Loading of certain cargoes.* (1) Except as otherwise provided in paragraph (f)(2) of this section, no person shall present to any common carrier or contract carrier for movement, and no common carrier or contract carrier shall load, any cargo containing fruits, vegetables, or other articles regulated under this subpart that are destined for movement from Hawaii, Puerto Rico, Guam, or the U.S. Virgin Islands to any other State unless the cargo has been offered for inspection, passed by an inspector, and bears a U.S. Department of Agriculture stamp or inspection sticker, or unless a limited permit is attached to the cargo as specified in § 318.13–3(e).

(2) Cargo designated may be loaded without a U.S. Department of Agriculture stamp or inspection sticker attached to the cargo or a limited permit attached to the cargo if the cargo is moved:

(i) As containerized cargo on ships or other oceangoing craft or as air cargo;

(ii) The carrier has on file documentary evidence that a valid limited permit was issued for the movement or that the cargo was certified; and

(iii) A notation of the existence of these documents is made by the carrier on the waybill, manifest, or bill of lading that accompanies the consignment.

(3) Cargo moved in accordance with § 318.13–6(b) that does not have a limited permit attached to the cargo must have a limited permit attached to the waybill, manifest, or bill of lading accompanying the consignment.

(g) *Removal of certain cargoes in Guam.* No person shall remove or attempt to remove from a designated inspection area as provided in paragraph (h) of this section, on or off the means of conveyance, any cargo moved from Hawaii, Puerto Rico, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands to Guam containing fruits, vegetables, or other articles regulated under this subpart, unless the cargo has been inspected and passed by an inspector in Guam.

(h) *Space and facilities for baggage and cargo inspection.* Baggage and cargo inspection will not be performed until the person in charge or possession of the ship, other oceangoing craft, or aircraft provides space and facilities on the means of conveyance, pier, or airport that are adequate, in the inspector's judgment, for the performance of inspection.

§ 318.13–11 Posting of warning notice and distribution of baggage declarations.

(a) Before any aircraft or any ship, vessel, or other surface craft moving to Guam, the Commonwealth of Northern Mariana Islands, or American Samoa from Hawaii or any other territory or possession of the United States arrives in Guam, the Commonwealth of Northern Mariana Islands, or American Samoa, a baggage declaration, to be furnished by the U.S. Department of Agriculture, calling attention to the provisions of the Plant Protection Act, and the quarantine and regulations in this subpart, must be distributed to each adult passenger. These baggage declarations shall be executed and signed by the passengers and shall be collected and delivered by the master or other responsible officer of the aircraft, ship, vessel, or other surface craft to the inspector on arrival at the quarantine or inspection area.

(b) Every person owning or controlling any dock, harbor, or landing field in Hawaii, Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, or the U.S. Virgin Islands from which ships, vessels, other surface craft, or aircraft leave for ports in any other State shall post, and keep posted at all times, in one or more conspicuous places in passenger waiting rooms on or in said dock, harbor, or landing field a warning notice directing attention to the quarantine and regulations in this subpart. Every master, or other responsible officer of any ship, vessel, other surface craft, or aircraft leaving Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands destined to a port in any other State, shall similarly post, and keep posted at all times, such a warning notice in the ship, vessel, other surface craft, or aircraft under his charge.

§ 318.13–12 Movement by the U.S. Department of Agriculture.

Notwithstanding any other restrictions of this subpart, regulated articles may be moved if they are moved by the U.S. Department of Agriculture for experimental or scientific purposes and are moved under conditions found by the Administrator to be adequate to prevent the spread of plant pests and diseases.

§ 318.13–13 Movement of frozen fruits and vegetables.

Frozen fruits and vegetables may be certified for movement from Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands, into or through any other territory, State, or District of the United States in accordance with § 318.13–3. Such fruits and vegetables must be held at a temperature not higher than 20 °F during shipping and upon arrival in the continental United States, and in accordance with the requirements for the interstate movement of frozen fruits and vegetables in part 305 of this chapter. Paragraph (b) of § 305.17 lists frozen fruits and vegetables for which quick freezing is not an authorized treatment.

§ 318.13–14 Movement of processed fruits, vegetables, and other products.

(a) Fruits, vegetables, and other products that are processed sufficiently as to preclude the survival of any live

pests can be moved interstate from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands. Those processed products which are approved for interstate movement from those States can be found in the fruits and vegetables manuals for those States.

(b) Consignments of processed fruits, vegetables, or other products that have not been processed sufficiently as to be incapable of harboring fruit flies, are subject to the interstate movement requirements which apply to the fruit, vegetable, or other product in its unprocessed state.

§ 318.13–15 Parcel post inspection.

Inspectors are authorized to inspect, with the cooperation of the U.S. Postal Service, parcel post packages placed in the mails in Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands to determine whether such packages contain products whose movement is not authorized under this subpart, to examine any such products that are found for insect infestation, and to notify the postmaster in writing of any violations of this subpart that are found as a result of an inspection.

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

(a) The following regulated articles may be moved interstate in accordance with § 318.13–3 and any additional requirements specified in paragraph (b) of this section.

State, territory, or district of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Hawaii	Bananas[1]	*Musa* spp.	Fruit	(b)(1)(i), (b)(2)(ii)
	Pot marigold, johnny-jump-ups, pansies, and violets.	*Calendula* spp.	Flower	(b)(2)(iii)
	Pineapple[2]	*Ananas comosus*	Fruit	(b)(2)(i)
Puerto Rico	Cactus	*Cactaceae*	Whole plant.	(b)(2)(iv), (b)(3)(ii)
	Okra	*Abelmoschus escuelentus*	Fruit	(b)(3)(i)
	Pot marigold, johnny-jump-ups, pansies, and violets.	*Calendula* spp.	Flower	(b)(2)(iii)
U.S. Virgin Islands.	Cactus	*Cactaceae*	Whole plant.	(b)(2)(iv), (b)(3)(ii)
	Okra	*Abelmoschus escuelentus*	Fruit	(b)(3)(i)
	Pot marigold, johnny-jump-ups, pansies, and violets.	*Calendula* spp.	Flower	(b)(2)(iii)

[1] Fruit may also be moved interstate in accordance with § 318.13–17.
[2] Fruit may also be moved interstate with treatment in accordance with part 305 of this chapter.

(b) Additional restrictions for applicable regulated articles as specified in paragraph (a) of this section.

(1) *Restricted movement and distribution.*

(i) Allowed movement into Alaska. Cartons must be labeled, ''For distribution in Alaska only.''

(ii) [Reserved]

(2) *Plant types.*

(i) Smooth cayenne variety and hybrids with 50 percent or more smooth cayenne parentage only.

(ii) Green bananas of the cultivars ''Williams,'' ''Valery,'' ''Grand Nain,'' and standard and dwarf ''Brazilian'' only.

(iii) Inflorescences only with no stems or leaves attached.

(iv) Bare-rooted plants or plants rooted in approved growing media only.

(3) *Other conditions.*

(i) If destined to States other than Alabama, Arizona, Arkansas, California, Florida, Georgia, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, or Virginia, the consignment must be treated in accordance with part 305 of this chapter unless the consignment is for immediate consumption or processing.

(ii) Must be treated in accordance with part 305 of this chapter.

§ 318.13–17 Regulated articles from Guam.

(a)(1) Regulated articles, other than soil, may be moved from Guam into or through any other State only if, they meet the strictest plant quarantine requirements under part 319 of this chapter for similar articles offered for entry into such States from the countries of East and Southeast Asia, including Cambodia, India, Japan, Korea, Laos, the northeastern provinces of Manchuria, the Philippines, Taiwan, and Vietnam or the islands of the Central and South Pacific, including Micronesia, Melanesia, and Polynesia, as well as Australia, New Zealand, and the Malay Archipelago, except requirements for permits, phytosanitary certificates, notices of arrival, and notices of consignment from port of arrival. Soil must meet the requirements of § 330.300 of this chapter.

(2) Regulated articles that do not meet the requirements of paragraph (a)(1) of this section are prohibited movement from Guam into or through any other State.

(b)(1) Regulated articles moved from Guam into or through any other State shall be subject to inspection at the port of first arrival in another part of the United States to determine whether they are free of plant pests and otherwise meet the requirements applicable to them under this subpart, and shall be subject to release, in accordance with § 330.105(a) of this chapter as if they were foreign arrivals. Such articles shall be released only if they meet all applicable requirements under this subpart.

(2) A release shall be issued in writing unless the inspection involves small quantities of regulated articles, in which case a release may be issued orally by the inspector.

§§ 318.13–18 through 318.13–20 [Reserved]

§ 318.13–21 Avocados from Hawaii to Alaska.

Avocados may be moved interstate from Hawaii to Alaska without treatment only under the following conditions:

(a) *Distribution and marking requirements.* The avocados may be moved interstate for distribution in Alaska only, the boxes of avocados must be clearly marked with the statement ''Distribution limited to the State of Alaska,'' and the consignment must be identified in accordance with the requirements of § 318.13–3.

(b) *Commercial consignments.* The avocados may be moved in commercial consignments only.

(c) *Packing requirements.* The avocados must have been sealed in the

packinghouse in Hawaii in boxes with a seal that will break if the box is opened.

(d) *Ports.* The avocados may enter the continental United States only at the following ports: Portland, OR; Seattle, WA; or any port in Alaska.

(e) *Shipping requirements.* The avocados must be moved either by air or ship and in a sealed container. The avocados may not be commingled in the same sealed container with articles that are intended for entry and distribution in any State other than Alaska. If the avocados arrive at either Portland, OR, or Seattle, WA, they may be transloaded only under the following conditions:

(1) *Consignments by sea.* The avocados may be transloaded from one ship to another ship at the port of arrival, provided they remain in the original sealed container and that APHIS inspectors supervise the transloading. If the avocados are stored before reloading, they must be kept in the original sealed container and must be in an area that is either locked or guarded at all times the avocados are present.

(2) *Consignments by air.* The avocados may be transloaded from one aircraft to another aircraft at the port of arrival, provided the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport (i.e., that area of the airport that is open only to personnel authorized by the airport security authorities);

(iii) The area used for any storage of the consignment is within the secure area of the airport, and is either locked or guarded at all times the avocados are present. The avocados must be kept in a sealed container while stored in the continental United States en route to Alaska; and

(iv) APHIS inspectors supervise the transloading.

(3) *Exceptions.* No transloading other than that described in paragraphs (e)(1) and (e)(2) of this section is allowed except under extenuating circumstances (such as equipment breakdown) and when authorized and supervised by an APHIS inspector.

(f) *Limited permit.* Consignments of avocados must be accompanied by a limited permit issued by an APHIS inspector in accordance with § 318.13–3(c). The limited permit will be issued only if the inspector examines the consignment and determines that the consignment has been prepared in compliance with the provisions of this section.

§ 318.13–22 Bananas from Hawaii.

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

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

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

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

(4) To safeguard from fruit fly infestation, the bananas must be covered with insect proof packaging, such as insect-proof mesh screens or plastic tarpaulins, from the time that they are packaged for shipment until they reach the port of arrival on the mainland United States.

(b) Bananas of any cultivar or ripeness that do not meet the conditions of paragraph (a) of this section may also be moved interstate from Hawaii in accordance with the following conditions:

(1) The bananas are irradiated at the minimum dose listed in § 305.31(a) of this chapter and in accordance with the other requirements in § 305.34 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 at the minimum dose listed in § 305.31(a) of this chapter and in accordance with the other requirements in § 305.34 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.

(3) Untreated bananas from Hawaii may be moved interstate for treatment on the mainland United States under a limited permit issued by an inspector. To be eligible for a limited permit under this paragraph, bananas from Hawaii must be inspected prior to interstate movement from Hawaii and found free of banana moth if they are to be treated in accordance with the requirements of paragraph (b)(1) of this section or inspected and found free of banana moth and green scale if they are to be treated in accordance with the requirements of paragraph (b)(2) of this section.

§ 318.13–23 Cut flowers from Hawaii.

(a) Except for cut blooms and leis of mauna loa and jade vine and except for cut blooms of gardenia not grown in accordance with paragraph (b) of this section, cut flowers may be moved interstate from Hawaii under limited permit, to a destination specified in the permit, directly from an establishment operated in accordance with the terms of a compliance agreement executed by the operator of the establishment, if the articles have not been exposed to infestation and they are not accompanied by any articles prohibited interstate movement under this subpart.

(b) Cut blooms of gardenia may be moved interstate from Hawaii if grown and inspected in accordance with the provisions of this section.[4]

(1) The grower's production area must be inspected annually by an inspector and found free of green scale. If green scale is found during an inspection, a 2-month ban will be placed on the interstate movement of cut blooms of gardenia from that production area. Near the end of the 2 months, an inspector will reinspect the grower's production area to determine whether green scale is present. If reinspection determines that the production area is free of green scale, shipping may resume. If reinspection determines that green scale is still present in the production area, another 2-month ban on shipping will be placed on the interstate movement of gardenia from that production area. Each ban will be followed by reinspection in the manner specified, and the production area must be found free of green scale prior to interstate movement.

[3] Bananas from Hawaii may also be moved to Alaska under § 318.13–16.

[4] Cut blooms of gardenia are also eligible for interstate movement with treatment in accordance with part 305 of this chapter.

(2) The grower must establish a buffer area surrounding gardenia production areas. The buffer area must extend 20 feet from the edge of the production area. Within the buffer area, the growing of gardenias and the following green scale host plants is prohibited: Ixora, ginger *(Alpinia purpurata),* plumeria, coffee, rambutan, litchi, guava, citrus, anthurium, avocado, banana, cocoa, macadamia, celery, *Pluchea indica,* mango, orchids, and annona.

(3) An inspector must visually inspect the cut blooms of gardenias in each consignment prior to interstate movement from Hawaii to the mainland United States. If the inspector does not detect green scale in the consignment, the inspector will certify the consignment in accordance with § 318.13–3(b). If the inspector finds green scale in a consignment, that consignment will be ineligible for interstate movement from Hawaii. (Approved by the Office of Management and Budget under control number 0579–0197)

§ 318.13–24 Sweetpotatoes from Puerto Rico.

Sweetpotatoes from Puerto Rico may be moved interstate to Atlantic Coast ports north of and including Baltimore, MD, under limited permit if treated in accordance with part 305 of this chapter or if the following conditions are met:

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

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

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

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

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

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

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

§ 318.13–25 Sweetpotatoes from Hawaii.

(a) Sweetpotatoes may be moved interstate from Hawaii in accordance with this section only if the following conditions are met: [5]

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

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

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

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

(A) The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.[6]

(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] Sweetpotatoes may also be moved interstate from Hawaii with irradiation in accordance with § 305.34 of this chapter or after fumigation with methyl bromide according to treatment schedule T–101–b–3–1, as provided for in § 305.6(a) of this chapter.

[6] 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.

(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) *[Reserved]*

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

Subpart—Fruits and Vegetables From Puerto Rico or Virgin Islands [Removed]

5. Subpart—Fruits and Vegetables From Puerto Rico or Virgin Islands, consisting of §§ 318.58 through 318.58–16, is removed.

Subpart—Guam [Removed]

6. Subpart—Guam, consisting of §§ 318.82 through 318.82–3, is removed.

Done in Washington, DC, this 10th day of June 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–13480 Filed 6–16–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0657; Directorate Identifier 2007–NM–296–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Airbus Model A300, A310, and A300–600 series airplanes. The existing AD currently requires repetitive detailed visual inspections to detect cracks in the pylon thrust and sideload fitting of the wing, and replacement of any cracked pylon thrust and sideload fitting with a new fitting. This proposed AD would