

bell peppers, eggplants, mangoes, pineapples (other than smooth Cayenne), Italian squash, and tomatoes before they are moved interstate. However, if there is not enough capacity at the Hawaiian plant for the fruits to be irradiated, the fruits can be sent for treatment to any of the three irradiation treatment facilities on the mainland United States.

According to SBA criteria, the facility in Hawaii mentioned in the previous paragraphs is a small entity (*i.e.*, an entity with annual sales of less than \$5 million). Another firm that provides irradiation treatments for fruits and vegetables owns two irradiation facilities in Illinois and one facility in New Jersey. This other firm, which primarily provides irradiation treatment to sanitize medical devices, is not a small entity according to SBA criteria.

This final rule benefits the Hawaiian treatment facility, and may benefit the mainland facilities if the Hawaiian facility cannot keep up with demand for treatment of fruits and vegetables moving interstate from Hawaii. The final rule could also potentially benefit U.S. mainland consumers by increasing the mainland's supply of those fruits and vegetables that will now be eligible for interstate movement with irradiation treatment.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number

0579–0198. Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 318

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

Accordingly, we are amending 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7754, and 7756; 7 CFR 2.22, 2.80, and 371.3.

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

a. By revising paragraphs (a), (b)(2)(i), (b)(5), and (b)(6)(ii) to read as set forth below.

b. By adding, at the end of the section, the following: “(Approved by the Office of Management and Budget under control number 0579–0198)”.

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

(a) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the following fruits and vegetables at the specified dose levels:

IRRADIATION FOR FRUIT FLIES AND SEED WEEVILS IN HAWAIIAN FRUITS AND VEGETABLES

Fruit	Dose (gray)
Abiu	250
Atemoya	250
Bell pepper	250
Carambola	250
Eggplant	250
Litchi	250
Longan	250
Mango	300
Papaya	250
Pineapple (other than smooth Cayenne)	250

IRRADIATION FOR FRUIT FLIES AND SEED WEEVILS IN HAWAIIAN FRUITS AND VEGETABLES—Continued

Fruit	Dose (gray)
Rambutan	250
Sapodilla	250
Italian squash	250
Tomato	250

* * * * *

(b) * * *

(2) * * *

(i) Be capable of administering the minimum absorbed ionizing radiation doses specified in paragraph (a) of this section to the fruits and vegetables;²

* * * * *

(5) *Dosage.* The fruits and vegetables must receive the minimum absorbed ionizing radiation dose specified in paragraph (a) of this section.⁵

(6) * * *

(ii) Absorbed dose must be measured using a dosimeter that can accurately measure the absorbed doses specified in paragraph (a) of this section.

* * * * *

Done in Washington, DC this 30th day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–2681 Filed 2–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 01–042–2]

Interstate Movement of Gardenia From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Hawaiian fruits and vegetables regulations to provide for the movement of cut blooms of gardenia from Hawaii. We have determined that specific growing and inspection protocols can effectively mitigate the plant pest risks associated with gardenia grown in Hawaii. This action provides for the interstate movement of gardenia from

² The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR part 179.

⁵ See footnote 2.

Hawaii while continuing to prevent the spread of plant pests within the United States.

EFFECTIVE DATE: March 7, 2003.

FOR FURTHER INFORMATION CONTACT: Hesham A. Abuelnaga, Import/Export Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5334.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Hawaiian Fruits and Vegetables” (7 CFR 318.13 through 318.13–17, referred to below as the regulations) govern, among other things, the interstate movement of fruits, vegetables, and other products, including cut flowers, from Hawaii. Regulation is necessary to prevent the spread of plant pests that exist in Hawaii.

The regulations in § 318.13–3(b)(1) provide that cut flowers (except cut blooms of gardenia, mauna loa, and jade vine, and leis thereof) may be moved interstate under certain conditions and if accompanied by a limited permit. The movement of cut blooms of gardenia has been prohibited due to gardenia’s status as a host of green scale (*Coccus viridis*), also known as green coffee scale.

On May 15, 2002, we published in the **Federal Register** (67 FR 34626–34630, Docket No. 01–042–1) a proposal to amend the regulations to provide for the interstate movement of gardenia from Hawaii. As described in the proposed rule, cut blooms of gardenia from Hawaii would be eligible for movement to other parts of the United States if they were treated with irradiation in Hawaii or grown in accordance with certain prescribed conditions.

We solicited comments concerning our proposal for 60 days ending July 15, 2002. We received a total of four comments by that date. They were from growers, researchers, and private citizens. Three commenters strongly supported the proposal, agreeing that specific growing and inspection protocols or irradiation treatment will effectively mitigate the plant pest risks associated with green scale and facilitate interstate movement of gardenia blooms from Hawaii.

The remaining commenter stated that existing data concerning irradiation dosage rates for the treatment of gardenias for green scale are insufficient to support the effectiveness of the treatment described in the proposed rule. As a result of that comment, we reevaluated the proposed irradiation treatment option and found that the recommended 250 gray dosage likely is

insufficient, since the data indicate that complete mortality of all green scales on gardenia treated at the proposed 250 gray dosage only occurs after 20 weeks. A higher dosage would be preferable, but testing has demonstrated that gardenias do not tolerate such a dose without unacceptable decline in quality. Consequently, we have concluded that the irradiation treatment described in the proposed rule would be an unacceptable treatment for quarantine purposes. Based on that conclusion, we have omitted treatment with irradiation from this final rule as an option for qualifying cut blooms of gardenia for interstate movement from Hawaii. We will continue to examine the irradiation treatment option and, if appropriate, amend the provisions for interstate movement of gardenias in the future.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This 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.

In this document, we are amending the regulations to provide for the movement of cut blooms of gardenia from Hawaii. We have determined that specific growing and inspection protocols can effectively mitigate the plant pest risks associated with gardenia grown in Hawaii. This action provides for the interstate movement of gardenias from Hawaii while continuing to prevent the spread of plant pests within the United States.

Under this rule, gardenia growers in Hawaii who wish to move cut blooms of gardenia interstate from Hawaii would be able to do so if the gardenias were produced in a growing area determined by an inspector to be free of green scale and to meet other requirements and if the cut blooms were inspected and found free of green scale prior to interstate movement.

According to the USDA’s Pacific Basin Agricultural Research Center in Hawaii, the total planted area of gardenias in Hawaii is 26.6 acres. Of the 26.6 acres of gardenias, only 3.6 acres belong to commercial farms: 2 acres in Kona, on the island of Hawaii; 1.1 acres in the Manoa Valley (Oahu); and 0.5 acres in Waipahu (Oahu). The remaining 23 acres of planted gardenias in Hawaii are owned by approximately 100 growers, each having an average of

20 to 25 bushes or about 10,000 square feet of production area. These gardenias are grown in “backyard” type production conditions.

The largest commercial gardenia production area in Hawaii consists of 2 acres of planted gardenia bushes that produce about 69,200 flowers per year, with annual gross receipts from sales of just under \$13,000. While sales figures are not available for the two smaller commercial producers, we presume that their annual sales are less than those of the largest producer.

According to Small Business Administration size standards, an entity involved in floriculture production (NAICS code 111422) is considered a small entity if it has annual sales of less than \$750,000. Under this definition, all commercial gardenia growers in Hawaii would be considered small entities.

Impact on Small Entities

Under the Regulatory Flexibility Act, agencies are required to specifically consider the economic effects of their rules on small entities. The entities most likely to be affected by this rule are the commercial producers of gardenias discussed previously in this analysis; the producers are all considered to be small entities.

We expect that commercial gardenia producers will benefit from the ability to move their products interstate to markets in the continental United States while incurring the costs associated with establishing and maintaining a green-scale-free growing area. While we cannot estimate the amount of additional sales that might be enjoyed by commercial gardenia producers as a result of this rule, we do not expect that amount will be substantial, given the limited scale of commercial gardenia production in Hawaii. The costs associated with the production area requirements are likely to be negligible and limited to the maintenance of a 20-foot-host-plant-free buffer zone around the production area, as the required inspections will be provided free of charge.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalogue 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0197.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects in 7 CFR Part 318

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

Accordingly, we are amending 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7754, and 7756; 7 CFR 2.22, 2.80, and 371.3.

Subpart—Hawaiian Fruits, Vegetables, and Flowers

2. The heading for the subpart is revised to read as set forth above.

§ 318.13-1 [Amended]

3. In § 318.13-1, in the definition of *fruits and vegetables*, the word “mellons” is corrected to read “melons”.

§ 318.13-2 [Amended]

4. In § 318.13-2, paragraph (b) is amended as follows:

a. In the introductory text, by removing the words “fruits and

vegetables” and adding the word “articles” in their place.

b. In the list of regulated articles, by adding, in alphabetical order, an entry for “Gardenia (cut blooms)”.

c. At the end of the section, in the sentence following the list, by removing the words “and vegetables” and adding the words “, vegetables, or other products” in their place and by removing the words “fruits or vegetables” and adding the words “articles” in their place.

§ 318.13-3 [Amended]

5. In § 318.13-3, paragraph (b)(1) is amended by removing the words “gardenia, mauna loa,” and adding the words “mauna loa” in their place and by adding the words “, and except any cut blooms of gardenia not grown in accordance with § 318.13-4j” after the word “thereof”.

§ 318.13-4 [Amended]

6. Section 318.13-4 is amended as follows:

a. In paragraph (a), by removing the words “Fruits and vegetables” and adding the words “Regulated articles” in their place.

b. In paragraph (c)(2), by removing the words “fruits and vegetables” and adding the words “fruits, vegetables, or other products” in their place.

7. A new § 318.13-4j is added to read as follows:

§ 318.13-4j Administrative instructions governing the interstate movement of cut blooms of gardenia from Hawaii.

Cut blooms of gardenia may be moved interstate from Hawaii if grown and inspected in accordance with the provisions of this section.

(a) 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.

(b) 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, *Pluto indicia* (a weed introduced into Hawaii), mango, orchids, and annona.

(c) An inspector must visually inspect the cut blooms of gardenias in each shipment prior to interstate movement from Hawaii to the mainland United States. If the inspector does not detect green scale in the shipment, the inspector would issue a certificate for the shipment in accordance with § 318.13-4(a). If the inspector finds green scale in a shipment, that shipment will be ineligible for interstate movement from Hawaii.

(Approved by the Office of Management and Budget under control number 0579-0197)

Done in Washington, DC this 30th day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03-2683 Filed 2-4-03; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 94**

[Docket No. 01-037-2]

Importation of Used Farm Equipment From Regions Affected With Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations concerning foot-and-mouth disease to prohibit the importation of used farm equipment from regions affected with foot-and-mouth disease unless the equipment has been steam-cleaned prior to export to the United States so that it is free of exposed dirt and other particulate matter. The interim rule also provided that cleaned equipment that arrives at the port of arrival with a minimal amount of exposed dirt may, under certain conditions, be cleaned at