

Rules and Regulations

Federal Register

Vol. 68, No. 123

Thursday, June 26, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 03-062-1]

Irradiation of Sweetpotatoes From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to provide for the use of irradiation as a treatment for sweetpotatoes to be moved interstate from Hawaii. The sweetpotatoes will also have to meet certain additional requirements, including inspection and packaging requirements. This action provides for the use of irradiation as an alternative to methyl bromide for the treatment of sweetpotatoes moving interstate from Hawaii.

DATES: This interim rule is effective June 26, 2003. We will consider all comments that we receive on or before August 25, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03-062-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 03-062-1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03-062-1" on the subject line.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737-1236; (301) 734-6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 318 prohibit or restrict the interstate movement of fruits, vegetables, and certain other articles from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam to prevent the introduction and dissemination of plant pests into the continental United States.

The regulations in part 318, "Subpart—Sweetpotatoes" (§§ 318.30 and 318.30a, referred to below as the regulations) quarantine Hawaii, Puerto Rico, and the U.S. Virgin Islands because of the sweetpotato scarabee (*Euscepes postfasciatus* Fairm. [Coleoptera: Cucurliionidae], also known as the West Indian sweetpotato weevil) and the sweetpotato stem borer (*Omphisa anastomosalis* Guen. [Lepidoptera: Crambidae], also known as the sweetpotato vine borer) and restricts the interstate movement of sweetpotatoes (*Ipomoea batatas* Poir.) from those places.

The regulations have provided that sweetpotatoes may be moved interstate from Hawaii only if they have been subjected to fumigation with methyl bromide or they are being moved by the United States Department of Agriculture (USDA) for scientific or experimental purposes. In this interim rule, we are adding treatment with irradiation as an alternative to fumigation with methyl

bromide. Specifically, sweetpotatoes from Hawaii will be eligible for interstate movement if they are irradiated with a minimum dose of 400 Gy (40 krad) at an approved facility. We have determined that this dose will neutralize the pests of concern.

A pest risk assessment completed by the Animal and Plant Health Inspection Service (APHIS) in 2002 and updated in May 2003 identified five pests of concern that could be spread from Hawaii to the rest of the United States by the interstate movement of sweetpotatoes: The two pests already named in the regulations, the sweetpotato scarabee and the sweetpotato stem borer; the gray pineapple mealybug, *Dysmicoccus neobrevipes* (Homoptera: Pseudococcidae); the ginger weevil, *Elytrotreinus subtruncatus* (Coleoptera: Cucurliionidae); and the Kona coffee root-knot nematode, *Meloidogyne konaensis* (Tylenchida: Heteroderidae). Copies of this risk assessment may be requested from the person listed under

FOR FURTHER INFORMATION CONTACT.

Three of these pests, the ginger weevil, the sweetpotato scarabee, and the sweetpotato stem borer, are internal pests, meaning that visual inspection would not be an effective means to intercept them; thus, they must be neutralized by treatment. We believe that irradiation at 400 Gy (40 krad) is an effective alternative to the methyl bromide treatment currently prescribed by the regulations to control these pests. No specific research has been completed on the irradiation dose necessary to neutralize the ginger weevil, the sweetpotato scarabee, or the sweetpotato stem borer. However, the International Plant Protection Convention (IPPC) Guidelines for the Use of Irradiation as a Phytosanitary Measure (ISPM Publication No. 18) recommends minimum doses between 50 and 400 Gy (5 and 40 krad) for all plant pests except stored product moths and nematodes. For stored product beetles of the family Coleoptera, such as the sweetpotato scarabee and the ginger weevil, the recommended minimum dose range to sterilize actively reproducing adults is 50 to 400 Gy (5 to 40 krad). For borers of the family Lepidoptera, such as the sweetpotato stem borer, the recommended minimum dose range to prevent adult development from late larva is 100 to 280 Gy (10 to 28 krad).

These recommendations were developed based on research by G.J. Hallman¹ and the research summarized in the International Atomic Energy Agency's International Database on Insect Disinfestation and Sterilization.²

In addition, preliminary research conducted by the USDA's Agricultural Research Service on the sweetpotato scarabee and the sweetpotato stem borer indicates that irradiating sweetpotatoes with a dose of 400 Gy (40 krad) kills all of these pests if they are present in the sweetpotatoes. According to this research, a dose of 200 Gy (20 krad) is sufficient to stop reproduction in these pests. Given this information and the fact that 400 Gy is at the top of the range of minimum doses the IPPC recommends for neutralizing pests in the family that contains the ginger weevil, we believe that the minimum dose of 400 Gy (40 krad) that we are requiring is a conservative minimum requirement that will neutralize all three of these pests.

While the quality of some other commodities might be affected by irradiation at 400 Gy (40 krad), the sweetpotato grown in Hawaii has been shown to tolerate this dose. The minimum dose of 400 Gy (40 krad) required by this rule falls well below the maximum dose of 1,000 Gy (100 krad) specified by the Food and Drug Administration regulations that address the safety of irradiated foods.³ There are no commodity or food safety concerns associated with requiring that Hawaii-grown sweetpotatoes be irradiated with a dose of 400 Gy (40 krad).

The other two pests identified in the 2002 risk assessment, the gray pineapple mealybug and the Kona coffee root-knot nematode, are external pests. We believe they can be effectively detected by visual inspection, and we are requiring such visual inspection as a condition of the interstate movement of sweetpotato from Hawaii. This is consistent with the recommendations of the pest risk assessment mentioned above.

The regulations in "Subpart—Hawaiian Fruits and Vegetables" in part 318 (§§ 318.13—318.13-17) already provide for the use of irradiation to treat a variety of other commodities from Hawaii. The irradiation provisions in § 318.13-4f allow abiu, atemoya, bell peppers, carambola, eggplant, litchi,

longan, mangoes, papaya, pineapple (other than smooth Cayenne), rambutan, saponilla, Italian squash, and tomatoes to be moved interstate from Hawaii if, among other things, the fruits and vegetables undergo irradiation treatment in accordance with that section. The section's provisions for irradiation treatment include minimum dosage requirements, requirements for approved facilities, treatment monitoring requirements, packaging standards, and movement restrictions. (The irradiation facility in Hawaii that presently treats other fruit for which irradiation is an approved treatment as a condition of interstate movement from Hawaii satisfies all these requirements and has already been approved by APHIS.)

Because these regulations in § 318.13-4f are already in place, and because we have determined that sweetpotatoes should be treated, handled, and certified for movement under the same conditions described in that section, we are adding sweetpotatoes to the list of fruits and vegetables that may be treated with irradiation as a condition of interstate movement from Hawaii in § 318.13-4f(a). This will eliminate the need to establish what would be essentially the same provisions in § 318.30. We will, however, amend § 318.30 to provide that irradiation in accordance with § 318.13-4f may be used to qualify sweetpotatoes from Hawaii for interstate movement. We intend, in a future rulemaking, to revise the regulations in the sweetpotato subpart and perhaps disperse the provisions of the subpart into the subparts governing movement of fruits and vegetables from Hawaii and from Puerto Rico or the U.S. Virgin Islands, respectively.

The regulations in § 318.13-4f do not generally provide that fruits and vegetables treated in accordance with that section must also be inspected as a condition of interstate movement. However, the regulations in § 318.13-4f(b)(7) provide that litchi must be inspected and found free of the litchi fruit moth and other plant pests prior to treatment in Hawaii or movement to the mainland for treatment. Because, as noted above, sweetpotatoes moved interstate from Hawaii must be visually inspected to ensure that they are free of the gray pineapple mealybug and the Kona coffee root-knot nematode, we are adding an inspection provision for sweetpotatoes similar to that for litchi. Specifically, we are amending § 318.13-4f(b)(7)(i) to indicate that, to be eligible for a certificate for interstate movement, sweetpotatoes to be treated in Hawaii in accordance with § 318.13-4f must be

found by an inspector to be free of the gray pineapple mealybug and the Kona coffee root-knot nematode by an inspector before undergoing irradiation treatment in Hawaii. We are also amending § 318.13-4f(b)(7)(ii) to indicate that, to be eligible for a limited permit for the interstate movement of untreated sweetpotatoes from Hawaii for treatment on the mainland United States, sweetpotatoes from Hawaii must be inspected in Hawaii and found to be free of the gray pineapple mealybug and the Kona coffee root-knot nematode by an inspector.

The addition of sweetpotatoes to the regulations in § 318.13-4f that govern irradiation of fruits and vegetables moved interstate from Hawaii also necessitates three minor changes to those regulations:

- The title of the table in § 318.13-4f has read "Irradiation for Fruit Flies and Seed Weevils in Hawaiian Fruits and Vegetables." We are revising this title to read, more generically, "Irradiation for Plant Pests in Hawaiian Fruits and Vegetables."

- The heading of the left-hand column in that table has read "Fruit." We are revising this heading to read, more generically, "Commodity."

- Paragraph § 318.13-4f has stated that treatment in accordance with § 318.13-4f is approved to assure quarantine security against the Trifly complex. We are amending this paragraph to indicate that the treatment is approved to treat other plant pests as well.

This interim rule gives Hawaiian producers and exporters of sweetpotatoes who wish to move their products interstate an additional treatment option while continuing to protect against the introduction of plant pests associated with Hawaiian sweetpotato into other States.

Immediate Action

This rule provides for the use of irradiation to treat sweetpotatoes moving interstate from Hawaii. Immediate action is warranted to alleviate the negative economic effects that Hawaiian growers and shippers face as a result of the fact that our regulations previously only allowed fumigation as an acceptable treatment for Hawaiian sweetpotatoes moved interstate. Fumigation facilities are unavailable on some islands in Hawaii on which sweetpotatoes are grown, and producers of sweetpotatoes on those islands must pay additional transportation costs for treatment before moving their sweetpotatoes interstate. Because a more accessible irradiation facility that provides phytosanitary

¹ See "Irradiation as a quarantine treatment," in *Food Irradiation Principles and Applications*, Molins, R.A. (ed.). New York: J. Wiley & Sons, 2001, p. 113-130, and "Expanding radiation quarantine treatments beyond fruit flies," *Agricultural and Forest Entomology* 2:85-95, 2000.

² Available at <http://www-ididas.iaea.org>.

³ See 21 CFR part 179.

treatment of equal effectiveness is available to these producers, the requirement that sweetpotatoes must be fumigated to be moved interstate imposed an unnecessary economic hardship on these producers. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations to allow sweetpotatoes to be moved interstate from Hawaii if they undergo irradiation at an approved facility. The sweetpotatoes will also have to meet certain additional requirements, including inspection and packaging requirements. This action provides for the use of irradiation as an alternative to methyl bromide for the treatment of sweetpotatoes moved interstate from Hawaii.

Economic Importance of Sweetpotatoes in Hawaii and the Mainland United States

Commercial sweetpotato production in Hawaii occurs on the islands of Hawaii, Kauai, Maui, and Oahu. There were 53 sweetpotato farms in Hawaii in 1997.⁴ The production of sweetpotatoes in Hawaii amounted to 1.8 million pounds, and the value of these sweetpotatoes was \$900,000 in 2001 (table 1).

In the continental United States, sweetpotato is grown commercially in Alabama, California, Georgia, Louisiana, Mississippi, New Jersey, North Carolina, South Carolina, Texas, and Virginia.⁵ North Carolina, Louisiana, Mississippi, and California account for the major proportion of production area by State (table 2). In total, the United States

produced 1.36 billion pounds of sweetpotatoes from 93,500 acres in 2003 (table 3).

TABLE 1.—PRODUCTION STATISTICS FOR HAWAIIAN SWEETPOTATOES (2001)

Item	Amount
Harvested acres	220
Yield per acre (1,000 pounds)	8.2
Production (1,000 pounds)	1,800
Farm price (cents per pound)	50
Value of sales (1,000 dollars)	900

Source: Hawaii Agricultural Statistics Service.

TABLE 2.—ACRES OF SWEETPOTATOES PLANTED IN THE UNITED STATES (2003)

State	Acres planted
North Carolina	42,000
Louisiana	18,000
Mississippi	14,000
California	10,100
Texas	3,400
Alabama	2,900
Others ¹	3,100
Total	93,500

¹ Including Hawaii.
Source: Economic Research Service, USDA.

The crop is grown on 1,770 farms, which represents a decrease of 44 percent since 1987.⁶ Production of sweetpotatoes peaked in 1932 when 48 million cwt⁷ was generated, followed by a long-term downward trend in production. However, sweetpotato production trended higher again after 1988, and increased by 15 percent between 1989–1991 and 1999–2001. Farm cash receipts averaged \$214 million over the period 1999–2001. Few imports of sweetpotatoes enter the continental United States, with 97 percent of the import volume moving directly from the Dominican Republic into Puerto Rico. The Hawaiian sweetpotato production of 1.8 million pounds thus comprises a fairly minor proportion of the total production of 1,355 million pounds in the United States.

⁶ Lucier, G. "Sweet potatoes—getting to the root of demand." Economic Research Service, USDA, 2002.

⁷ "cwt" is an abbreviation for "hundredweight," the standard unit of production for sweetpotatoes. One hundredweight equals 100 pounds.

TABLE 3.—PRODUCTION AND CONSUMPTION STATISTICS FOR SWEETPOTATOES IN THE UNITED STATES (2003)¹

Item	Amount
Acres planted	93,500
Three year average yield (cwt/acre)	150
Production (million pounds)	1,355
Imports (million pounds)	17.0
Exports (million pounds)	53.0
Total utilization (million pounds) ²	1,148.3
Per capita use (pounds)	3.9
Three year average per capita use (pounds)	4.0
Current dollars (\$/cwt)	15.75
Constant 1996 dollars (\$/cwt)	13.91

¹ Estimates are for the total United States, and therefore include Hawaii. Forecasted estimates are shown.

² Total utilization includes 103 million pounds used for seed and 67.8 million pounds accruing to feed use, shrink, and loss.

Source: Economic Research Service, United States Department of Agriculture. Acres were obtained from Lucier.⁸

More than three-quarters of the annual U.S. sweetpotato crop is sold as human food, and around two-thirds of the total sales are for the fresh market. About a quarter of the sweetpotatoes sold for food are processed into frozen products, and 2 to 3 percent are chipped or dehydrated. U.S. sweetpotato utilization averaged 1.1 billion pounds during 1999–2001, accounting for almost 3.9 pounds per capita.

Treatment Costs

Costs of Methyl Bromide Fumigation

Methyl bromide fumigation is currently conducted on the Island of Oahu. The product has to be moved by barge from the port of Hilo on the Island of Hawaii to the port of Honolulu on Oahu. The charge for such transportation is between 2 to 3 cents per pound. A pallet of sweetpotatoes weighs 1,500 pounds (50 30-pound boxes), so the charge is approximately \$35 per pallet for a non-chilled shipment. Trucking and handling charges to move the sweetpotatoes from the pier on Oahu to the fumigation site and, after fumigation, back to the pier or to the airport are estimated at \$34 per pallet.

The per-unit cost of methyl bromide fumigation is influenced by the number of pallets treated. Costs are \$610 for 1 to 6 pallets, \$1,026 for 7 to 9, and \$1,250 for 10 to 12. The minimum charge is \$610. Per-unit cost thus decreases as more pallets are treated within these ranges. For example, the cost decreases from 40.6 cents per pound to 6.7 cents

⁸ Lucier, G., *ibid*.

⁴ Census of Agriculture, 1997, National Agricultural Statistics Service (NASS).

⁵ NASS, 1999.

per pound if six pallets instead of only one pallet are treated at \$610 (table 4).

TABLE 4.—COSTS OF METHYL BROMIDE FUMIGATION OF HAWAIIAN SWEETPOTATOES

Number of pallets	Weight (pounds)	Cost (cents per pound)
One	1,500	40.6
Two	3,000	20.3
Three	4,500	13.5
Four	6,000	10.1
Five	7,500	8.1
Six	9,000	6.7
Nine	13,500	7.6
Twelve	18,000	6.9

Source: Hawaii Department of Agriculture.

APHIS monitoring of the treatment costs \$368 per treatment. This is based on a minimum of 2 hours required to set up for the fumigation, a minimum of 2 hours for necessary after-treatment labor such as certification, and 2 hours minimum travel time each way to monitor the fumigation. The total 8 hours at \$46 per hour amounts to \$368. Due to the time delays involved in inter-island movements of sweetpotatoes, all fumigations are conducted after 4 p.m. or on weekends, which means that APHIS treatment monitors are paid “time-and-a-half” wages. If the sweetpotatoes being treated belong to more than one shipper, the APHIS costs are evenly divided between the shippers, regardless of the relative quantities treated for each shipper. For example, if two shippers are involved, each would pay \$184, even if one shipper’s sweetpotatoes comprised more than half of the total treated. APHIS monitoring costs for fumigation do not vary with the number of sweetpotatoes treated.

Various time delays are involved in the inter-island movement of the sweetpotatoes for fumigation, meaning that this transportation is sometimes problematic. Shipments from the main island, Hawaii, generally leave Hilo on Monday, with the barge arriving at Oahu on Wednesday. These shipments are treated on Wednesday or Thursday and arrive by Friday on the mainland U.S. west coast if transported by air. The barge that leaves Hilo on Thursday arrives at Oahu on Saturday. Weekend fumigation is conducted at significantly higher costs and Sunday pickup at the pier is not allowed. Thus, shipping sweetpotatoes on the Thursday barge is generally avoided.⁹

There are also concerns regarding the future cost and availability of methyl

bromide given the continuing reductions in the use of methyl bromide mandated by the Montreal Protocol, which governs the use of substances that deplete stratospheric ozone; in 2005, all uses of methyl bromide in developed countries other than quarantine and pre-shipment applications and critical or emergency uses will be prohibited. The price of methyl bromide has increased significantly as worldwide production of methyl bromide has decreased from its 1991 baseline. According to the Environmental Protection Agency, U.S. west coast end-user prices of methyl bromide gas have increased from \$1.25 per pound to \$4.50 per pound over the period 1995 to 2001. This represents an increase of 366 percent. Further price increases are deemed likely as the 2005 phase-out date approaches.

Costs of Irradiation

The cost of irradiation is estimated at 15 cents per pound, regardless of the amount of sweetpotatoes treated.¹⁰ Lot sizes will be as requested by shippers. Irradiation treatment generally occurs between 8 a.m. and 4 p.m. At these times, an APHIS inspector would already be on-site at the irradiation facility to monitor the treatment under the terms of the compliance agreement irradiation facilities must operate under in order to treat fruits and vegetables from Hawaii for interstate movement. Therefore, there would generally be no additional APHIS charges associated with irradiation treatment. Shippers could choose to have their sweetpotatoes treated outside of normal hours and thus incur APHIS charges for overtime labor, but such scheduling would be optional; as noted above, all fumigation treatments currently must be conducted during overtime hours.

The irradiation will occur mostly at an existing facility in Hawaii, prior to the shipment of the sweetpotatoes to the mainland United States. The X-ray irradiation facility in Hawaii commenced its commercial operation on August 1, 2000. At first, only papayas were treated. Five hundred to 1,000 boxes of papayas are treated per day, 4 times a week. The facility is currently also used to treat mangoes, bell peppers, eggplants, pineapples (other than smooth Cayenne), Italian squash, and tomatoes. Most of the fruits and vegetables produced in Hawaii for which irradiation is an approved treatment are irradiated in Hawaii before they are moved interstate, but some fruits and vegetables are occasionally taken to one of three

irradiation facilities in the continental United States. These include facilities in Libertyville and Morton Grove in Illinois, and a facility in Whippany, New Jersey. Various other tropical fruits, such as papaya, litchi, rambutan, carambola, and atemoya, are at present shipped to Illinois for cobalt irradiation treatment.

The quantity of sweetpotatoes to be shipped annually from Hawaii is projected to fill approximately 21 forty-foot long shipping containers. Allowing irradiation as an alternative to fumigation with methyl bromide as a treatment for sweetpotatoes moving interstate from Hawaii may lead to increased production of sweetpotatoes in Hawaii if the lower cost of treatment makes sweetpotato a more profitable crop to produce and ship. The magnitude of the impact of this alternative treatment on production is presently unknown. Due to production limitations, it is estimated that the total volume of sweetpotatoes moved interstate from Hawaii could not exceed 100 containers per annum.

Benefits of Irradiation Treatment

The approval of irradiation as an alternative treatment for sweetpotatoes moved interstate from Hawaii will benefit various stakeholders. At 15 cents per pound, irradiation can be conducted at a lower cost than fumigation of one to two pallets (20.3 to 40.6 cents per pound) (table 4). Though larger quantities of sweetpotatoes, which fill more pallets, can be fumigated at lower per-unit costs (6.7 to 13.5 cents per pound), irradiation eliminates the transport costs associated with fumigation. These transport costs include moving the crop from the island of Hawaii to Oahu (2 to 3 cents per pound) and trucking and handling costs of moving the crop between the harbor or airport and the fumigation site on Oahu (\$34 per pallet, about 2.3 cents per pound). Irradiation also eliminates the cost of \$368 per treatment attributable to APHIS monitoring of fumigation, which is currently conducted outside standard business hours.

Growers and shippers on the main island of Hawaii will benefit from lower transportation costs, since shipment of the crop from Hawaii to Oahu for fumigation will no longer be necessary. The availability of treatment at a more convenient location will also remove various logistical complications. This will reduce the total expense and time delay in moving the product and will enable sweetpotatoes to be treated and shipped at a lower cost than is currently possible with fumigation. The importance of alternative treatments is

⁹ Source: Hawaii Department of Agriculture.

¹⁰ Source: Hawaii Department of Agriculture.

especially highlighted in view of the mandated global reductions in the use of methyl bromide under the Montreal Protocol and the expected rise in the price of methyl bromide due to its scarcer supply. Irradiation also tends to affect quality less negatively than fumigation and may extend the shelf life of the tubers.

The irradiation facility in Hawaii will benefit from having more crops available to treat. The treatment available at this facility has enabled many producers in Hawaii to move their products to the mainland, thus providing them with access to markets that were not previously available. For several years, the State of Hawaii has encouraged farmers to diversify agricultural production, given the significant decline in the production of sugarcane as a major crop. The approval of irradiation as a treatment for sweetpotatoes moved interstate from Hawaii will help to provide steady throughput for this facility. The facility currently treats seasonal crops whose volume is more variable than that of sweetpotatoes and is thus sometimes underutilized. A steady source of revenues from treatment, such as revenues from treating sweetpotatoes to be moved interstate, would help assure this facility's continued operation and availability for all the producers in Hawaii who can use it.

U.S. mainland consumers will benefit by an increased supply of sweetpotatoes. Hawaiian sweetpotato production amounts to 1.8 million pounds, which comprises a small proportion of the total production of 1,355 million pounds in the United States (tables 1, 2 and 3). Thus, even if the irradiation treatment leads to increased production of Hawaiian sweetpotatoes, sweetpotato shipments from Hawaii are unlikely to affect mainland producers negatively. However, to the extent that this interim rule makes moving sweetpotatoes from Hawaii interstate more convenient and less costly, the rule provides the Hawaiian sweetpotato industry with opportunities to expand its mainland markets.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their regulations on small entities. The Small Business Administration (SBA) has established size criteria in the North American Industry Classification System (NAICS) to determine which economic entities meet the definition of a small firm.

The irradiation facility in Hawaii is expected to be the primary facility to treat Hawaiian sweetpotatoes before they are moved interstate. If the facility in Hawaii does not have enough capacity to treat all the sweetpotatoes that producers wish to move interstate from Hawaii, some of the crop may be sent to one of the other three facilities on the mainland United States. The facility in Hawaii can be classified under NAICS category 115114, "Postharvest Crop Activities (except Cotton Ginning)." According to the SBA's criteria, this facility is classified as a small entity, since its annual sales are less than \$6 million. A single firm owns the two facilities in Illinois and the facility in New Jersey. Its primary service is to provide irradiation treatment for the sanitation of medical devices on contract. This firm is classified under NAICS category 325612, "Polish and Other Sanitation Good Manufacturing." However, since it is part of a larger corporation with 500 or more employees, that firm is not considered a small entity under the SBA's criteria.

Sweet potato farming is classified under NAICS 11219, "Other Vegetables (except Potato) and Melon Farming." According to the SBA's criteria, an entity involved in crop production is considered small if it has average annual receipts of less than \$750,000. Since the 53 sweetpotato farms in Hawaii accounted for sales of \$900,000 in 2001, we believe it is safe to assume that all of these farms would be classified as small entities. We expect that the economic effects of this rule will be positive for those producers, to the extent that this rule makes moving sweetpotatoes from Hawaii interstate more convenient and less costly. As noted above, due to the fact that Hawaiian sweetpotato production makes up a very small proportion of total U.S. sweetpotato production, this interim rule is not expected to significantly affect sweetpotato farmers in the mainland United States.

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 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

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

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 is revised to read as follows:

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

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

- a. In paragraph (a), in the table, by revising the title of the table and the heading of the left-hand column and by adding, in alphabetical order, an entry for "Sweetpotato" to read as set forth below.
- b. In paragraph (b)(7)(i), by revising the last sentence to read as set forth below.
- c. In paragraph (b)(7)(ii), by revising the last sentence to read as set forth below.
- d. In paragraph (e), by adding the words "and other plant pests" after the words "Trifly complex".

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

(a) * * *

IRRADIATION FOR PLANT PESTS IN HAWAIIAN FRUITS AND VEGETABLES

Commodity	Dose (Gray)
* * * * *	*
Sweetpotato	400
* * * * *	*

(b) * * *

(7) (i) * * * To be certified for interstate movement under this section,

litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector before undergoing irradiation treatment in Hawaii for fruit flies, and sweetpotato from Hawaii must be inspected in Hawaii and found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector before undergoing irradiation treatment in Hawaii.

(ii) * * * To be eligible for a limited permit under this section, untreated litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector, and untreated sweetpotato from Hawaii must be inspected in Hawaii and found to be free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector.

* * * * *

§ 318.30 [Amended]

■ 3. In § 318.30, paragraph (c) is amended by adding the words “the irradiation of such sweetpotatoes in accordance with § 318.13–4f or upon” immediately before the words “the fumigation of such sweetpotatoes in Hawaii”.

Done in Washington, DC, this 23rd day of June 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–16182 Filed 6–25–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR 1412, 1421, 1439, 1480

RIN 0560–AG95

2003 Agricultural Assistance Act— Crop Disaster Program and Livestock Assistance Program

AGENCIES: Commodity Credit Corporation, Farm Service Agency, USDA.

ACTION: Final Rule.

SUMMARY: This rule implements portions of the Agricultural Assistance Act of 2003 to provide crop-loss disaster assistance for producers who suffered 2001 or 2002 crop losses and to establish a Livestock Assistance Program. This rule also implements

provisions of the Consolidated Appropriations Resolution, 2003 (2003 Appropriations Act) that add the commodities crambe and sesame seed to the list of commodities eligible for CCC direct and counter-cyclical payments and marketing assistance loans and that provide that popcorn planted acreage is to be considered corn for determining corn crop acreage bases and yields. Other provisions of these Acts will be implemented under separate rules.

EFFECTIVE DATE: June 23, 2003.

FOR FURTHER INFORMATION CONTACT:

Crop disaster: Eloise Taylor, (202)720–9882, or Eloise_Taylor@wdc.usda.gov.

Livestock Assistance Program and Direct and Counter Cyclical Payment Program: Lynn Tjeerdsma, 202–720–6602, e-mail:

lynn_tjeerdsma@wdc.usda.gov.

Oilseeds: Raellen Erickson at (202) 720–6689, or via electronic mail at Raellen_Erickson@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 217(b) of the Agricultural Assistance Act of 2003 requires that the regulations to implement it shall be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553, or the Statement of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation in rulemaking (36 FR 13804, July 24, 1971). The crop disaster program and livestock assistance program are covered by section 765(c) of the 2003 Act. The 2003 Act did not provide a similar requirement for the addition of crambe and sesame seed to the oilseeds eligible for CCC direct and counter-cyclical payments and market assistance loans. However, the 2003 Act amended the Farm Security and Rural Investment Act of 2002 (the 2002 Act) to require those crops' inclusion and section 1601 of the 2002 Act provides the exemption. Thus, this rule is published as final.

Executive Order 12866

This final rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment of this rule was completed and is summarized after the Background section.

Federal Assistance Programs

This final rule applies to the following Federal assistance programs, as found in the Catalog of Federal Domestic Assistance:

10.051—Commodity Loans and Loan Deficiency Payments.

10.066—Livestock Assistance Program.

10.073—Crop Disaster Program.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because the agencies are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the national Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC and FSA have concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.