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§ 322.34 Inspection; refusal of entry.

(a) You must present shipments of restricted articles to the inspector at the port of entry in the United States. Shipments of restricted articles must remain at the port of entry until released by the inspector.

(b) The inspector at the port will confirm that all shipments of restricted articles have proper documentation (see § 322.30) and that you provided notice of arrival for all shipments of restricted articles (see § 322.32).

(c) If, upon inspection, any shipment fails to meet the requirements of this part, that shipment will be refused entry into the United States. In accordance with § 322.2(c), the inspector will offer you, or in your absence the shipper, the opportunity to immediately export any refused shipments, or confiscate and destroy the refused shipments.

(Approved by the Office of Management and Budget under control number 0579–0207)

§ 322.35 Ports of entry.

A restricted article may be imported only at a port of entry staffed by an APHIS inspector. To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by APHIS inspectors, contact Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, Maryland 20737–1236; toll-free (877) 770–5990; fax (301) 734–8700.

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

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

SOURCE: 24 FR 10825, Dec. 29, 1959, unless otherwise noted.

Subpart—General Provisions

§ 330.100 Definitions.

Words used in the singular form in the regulations in this part shall be deemed to impart the plural and vice versa, as the case may demand. For the

purposes of this part, unless the context otherwise requires, the following words shall be construed, respectively, to mean:

Administrative instructions. Published documents relating to the enforcement of the regulations in this part, issued under authority of such regulations by the Deputy Administrator.

Administrator. The Administrator of the Animal and Plant Health Inspection Service of the Department, or any officer or employee of the Animal and Plant Health Inspection Service to whom authority has heretofore been delegated or may hereafter be delegated to act in his/her stead.

Continental United States. The 49 States located on the continent of North America and the District of Columbia.

Customs. The Bureau of Customs, U.S. Treasury Department, or, with reference to Guam, the Customs office of the Government of Guam.

Department. The U.S. Department of Agriculture.

Deputy Administrator. The Deputy Administrator of the Plant Protection and Quarantine Programs of the Animal and Plant Health Inspection Service of the Department, or any officer or employee of the Plant Protection and Quarantine Programs to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

Earth. The softer matter composing part of the surface of the globe, in distinction from the firm rock, and including the soil and subsoil, as well as finely divided rock and other soil formation materials down to the rock layer.

Garbage. That material designated as ''garbage'' in § 330.400(b).

Inspector. A properly identified employee of the U.S. Department of Agriculture or other person authorized by the Department to enforce the provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

Interstate. From one State, Territory or possession or the District of Columbia into or through any other State, Territory or possession, or the District of Columbia. This term includes movements, within its provisions, to a port in the United States for export.

Means of conveyance. Automobiles, trucks, animal-drawn vehicles, railway cars, aircraft, boats, and other means of transportation.

Move (*moved and movement*). ''Move'' means ship, deposit for transmission in the mail, otherwise offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved, by mail or otherwise. ''Moved'' and ''movement'' shall be construed accordingly.

Owner. The owner, or his agent (including a carrier), having responsible custody of a plant pest, means of conveyance, product or article subject to the regulations in this part.

Permit. An authorization allowing the movement into or through the United States, or interstate, of a plant pest, or a regulated product, article, or means of conveyance in accordance with the provisions in this part.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Plant pest. (1) Except for §§ 330.200 through 330.212, ''plant pest'' means any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

(2) For purposes of §§ 330.200 through 330.212, *plant pest* means any living stage of insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances of the aforementioned which are not genetically engineered as defined in 7 CFR 340.1 which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

Plant Protection Act. Title IV of Public Law 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772, which was enacted June 20, 2000.

Plant Protection and Quarantine Programs. The Plant Protection and Quarantine Programs, Animal and Plant Inspection Health Service of the Department.

Regulated garbage. That material designated as ''regulated garbage'' in § 330.400(c) and § 330.400(d).

Shelf-stable. The condition achieved in a product, by application of heat, alone or in combination with other ingredients and/or other treatments, of being rendered free of microorganisms capable of growing in the product at nonrefrigerated conditions (over 50 °F. or 10 °C.).

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. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Territories or possessions. Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

Through the United States. From and to places outside the United States.

United States. All of the States.

[24 FR 10825, Dec. 29, 1959, as amended at 36 FR 24917, Dec. 24, 1971; 39 FR 32320, Sept. 6, 1974; 43 FR 39954, Sept. 9, 1978; 45 FR 80268, Dec. 4, 1980; 52 FR 22907, June 16, 1987; 52 FR 49344, Dec. 31, 1987; 53 FR 49976, Dec. 13, 1988; 66 FR 21058, Apr. 27, 2001; 71 FR 49314, Aug. 23, 2006]

§ 330.101 Policy.

The purpose of the regulations in this part is to prevent the dissemination of plant pests into the United States, or interstate, by regulating the movement of plant pests into or through the United States, or interstate, and the movement of means of conveyance, earth, stone and quarry products, garbage, and certain other products and articles into or through the United States, or from any Territory or possession into or through any other Territory or possession or the continental United States. The Deputy Administrator shall employ procedures to carry out this purpose which will impose a minimum of impediment to foreign commerce and travel whenever practicable, consistent with proper precaution against plant pest dissemination. The same policy is to be applied in the case of interstate commerce and travel.

§ 330.102 Basis for certain regulations.

Under the authority of the Plant Protection Act, the Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article (including baggage, mail, garbage, earth, stone, and quarry products) or means of conveyance if such actions are necessary to prevent the introduction into or the dissemination within the United States of a plant pest or noxious weed.

[66 FR 21058, Apr. 27, 2001]

§ 330.103 Documentation.

Any notifications, reports, and similar documentation not specified in the regulations in this part, but necessary to carry out the purpose of the regulations, will be prescribed in administrative instructions.

§ 330.104 Ports of entry.

Ports of entry for plant pests, means of conveyance, or other products or articles of any character whatsoever the entry or movement of which is regulated by the regulations in this part may be specified in administrative instructions or in the permits if permits are required by the regulations. The ports of entry shall be those named in 19 CFR 101.3(b)(1), except as otherwise provided by administrative instructions or by permits issued in accordance with this part, and except those ports of entry listed below.

LIST OF EXCEPTIONS TO CUSTOMS DESIGNATED PORTS OF ENTRY

State	Port of entry
[Reserved]	[Reserved]

[24 FR 10825, Dec. 29, 1959, as amended at 72 FR 43523, Aug. 6, 2007]

§ 330.105 Inspection.

(a) *Inspection of foreign arrivals.* In order to prevent the dissemination into the United States of plant pests and for the purpose of carrying out the regulations in this part, all plant pests; means of conveyance and their stores; baggage; mail; plants; plant products; soil; stone and quarry products under § 330.300; garbage; and any other product or article of any character whatsoever which an inspector considers may be infested or infected by or contain a plant pest, arriving in the United States from any place outside thereof for entry into or movement through the United States shall be subject to inspection by an inspector at the port of first arrival, except that mail will be handled in accordance with the joint customs and postal regulations for inspecting and handling mail. No such plant pests; means of conveyance or their stores; baggage; mail; plants; plant products; soil; stone or quarry products under § 330.300; garbage; or other products or articles which an inspector notifies the Customs authorities should be held for inspection shall be released by Customs officers for entry or onward movement until released by an inspector. The release of all means of conveyance, products and articles regulated under parts 319, 321, and 352 of this chapter shall be in accordance with the requirements of those parts and the applicable provisions in this part. Whenever it shall be deemed safe to modify the requirements of this section by exempting any class of means of conveyance, products or articles from the requirement that they be held for inspection and release of the inspector, the exemptions shall be specified in administrative instructions. Inspectors shall make local arrangements, in accordance with policies of the Plant Protection and Quarantine Programs, with the Collector of Customs for the release by Customs officers on behalf of the inspector of any class of means of conveyance, their stores, baggage, mail, or other products or articles when such arrangements do not increase unduly the danger of plant pest dissemination and will facilitate clearance of means of conveyance, baggage, mail, or other products or articles.

(b) *Inspection of domestic movements.* For the purpose of preventing the interstate movement of plant pests, provisions requiring inspection of means of conveyance and products or articles moving interstate may be issued as regulations in association with quarantines in part 301 or part 318 of this chapter or in this part.

NOTE: Notices appearing at 24 FR 4650, June 9, 1959, 24 FR 5363, July 2, 1959, 24 FR 6889, August 26, 1959, and 24 FR 7519, September 18, 1959, provide in part as follows: That means of conveyance subject to such inspection and release requirements and arriving at any port of entry outside the regularly assigned hours of duty of the Federal plant quarantine inspector, will be held for such inspection and release, until the regularly assigned hours of duty. However, notice is also hereby given that pursuant to the provisions of the Act of August 28, 1950 (7 U.S.C. 2260) such inspection service outside of the regularly assigned hours of duty may be made available to any interested person, upon a reimbursable basis and in accordance with applicable regulations, upon request to the Plant Quarantine Inspector in Charge at such port.

Information concerning regularly assigned hours of duty for Federal plant quarantine inspectors at each port where such inspection is available may be obtained locally by application to the Plant Quarantine Inspector in Charge at such port.

[24 FR 10825, Dec. 29, 1959, as amended at 62 FR 65009, Dec. 10, 1997]

§ 330.106 Emergency measures.

(a) *Procedures to prevent pest dissemination.* Whenever inspection of any means of conveyance, stores, baggage, mail, plants, plant products, earth, stone and quarry products, garbage, or other products or articles of any character whatsoever, arriving in the United States from a place outside thereof, or moving interstate, discloses a plant pest, or provides a reason to believe such a pest is present (other than one moving under permit in accordance with any conditions in the permit and

the provisions in this part) which is new to, or not theretofore known to be widely prevalent or distributed within and throughout the United States, the inspector shall employ procedures necessary to prevent the dissemination of the plant pest. Such procedures shall also be employed with respect to means of conveyance or products or articles of any character whatsoever which have moved into the United States or interstate and which the inspector has reason to believe were infested or infected by or contained any such plant pest at the time of such movement. The inspector may follow administrative instructions containing procedures prescribed for certain situations, or he may follow a procedure selected by him from administratively approved methods known to be effective. The procedure may involve seizure, quarantine, treatment, application of other remedial measures, exportation, return to shipping point of origin, destruction, or other disposal, but no means of conveyance, product, article, or plant pest owned by any person shall be destroyed, exported, or returned to shipping point of origin or ordered to be so handled, unless there is, in the opinion of the inspector, no less drastic action adequate to prevent the dissemination of the plant pest. In forming such an opinion that no less drastic action is adequate, the inspector shall be guided by applicable specific and general instructions received from officers of the Plant Protection and Quarantine Programs. In taking action with respect to any means of conveyance, product, article, plant pest, the inspector shall take cognizance of applicable requirements of the customs and postal laws and regulations.

(b) *Orders for remedial measures.* The inspector may order the owner of any means of conveyance, product, article, or plant pest, subject to disposal under paragraph (a) of this section, to treat, apply other remedial measures, destroy, or make other disposal thereof without cost to the Federal Government and in a manner specified in accordance with paragraph (a) of this section.

(c) *Failure to apply remedial measures.* If the measures required by the inspector are not applied promptly by the owner within the time limits specified by the inspector, the inspector shall apply measures necessary to prevent the dissemination of the plant pests.

(d) *Khapra beetle infestations of means of conveyance, or cargo or stores thereof; other infestations.* As a means of preventing the dissemination into the United States, or interstate, of the khapra beetle (Trogoderma granarium Everts), the following procedures will be applicable when that insect is found, or there is reason to believe it is present, in a means of conveyance within paragraph (a) of this section, or in any cargo or stores in such a means of conveyance, or in any cargo or stores unloaded or landed, or being unloaded or landed, in the United States therefrom. These procedures will also apply with respect to other plant pests when the inspector finds they are necessary and sufficient to prevent the spread of such pests.

(1) *Infestation in storerooms and similar compartments of means of conveyance* (*except aircraft*). (i) When infestation is found only in stores or storerooms, galleys, pantries, or similar noncargo compartments of a means of conveyance, except aircraft, the inspector shall prescribe and supervise the application of such remedial measures as, in his opinion, will be effective under conditions that will not spread the infestation to other parts of the means of conveyance, or to adjacent piers or other installations. If, in the opinion of the inspector, fumigation is the only available safeguard to eliminate the infestation, he shall order the owner to arrange for immediate fumigation of the infested stores and portions of the means of conveyance.

(ii) If the means of conveyance is to leave the territorial limits of the United States directly for a port in another country within 24 hours of such order, the inspector may suspend compliance with the fumigation requirement pending departure from the United States. Pending fumigation or departure, the inspector may seal the openings of infested compartments, packages, or articles, if in his opinion the action is necessary to prevent plant pest dissemination while the means of conveyance remains in the teritorial limits of the United States,

as authorized in § 330.110. The inspector may extend the 24-hour period to 48 hours, if, in his judgment, such extension is warranted by plans of the owner to remove the means of conveyance from the territorial limits of the United States within the extended period, the inability of the contractor to begin fumigation within the 24-hour period, or other reason deemed valid by the inspector. Further extension shall be given only under authority of the Deputy Administrator. Pending compliance with the requirement of fumigation, or the departure from the territorial limits of the United States directly for a port in another country, no stores, laundry, furnishings or equipment, or other articles or products whether in cargo or stores, shall be unloaded from the means of conveyance except as authorized by the inspector and under conditions prescribed by him. The owner of an infested means of conveyance under notice for fumigation which leaves the territorial limits of the United States without fumigation should arrange for the eradication of the infestation before returning to the same or another port in the United States. Upon return to a port in the United States and unless the infestation has been eliminated to the satisfaction of the inspector, the means of conveyance shall be subject to fumigation immediately upon arrival in the United States. Unloading or landing of any product or article shall not be permitted pending compliance with the fumigation requirement, except as authorized by the inspector and under conditions prescribed by him.

(iii) If the means of conveyance is to remain at the port where the infestation was found or is to be moved to another port in the United States, the inspector shall prescribe and supervise the application of the remedial measures at the port where the infestation is found, as provided in this paragraph, or he may authorize the means of conveyance to be moved to another port for fumigation or the application of other remedial measures under safeguards prescribed by him.

(iv) In all instances where the inspector prescribed procedures concerned with the application of remedial measures which involve (*a*) withholding permission to discharge articles or products; (*b*) permission to discharge after such permission has been withheld; (*c*) discontinuance of discharging; or (*d*) resumption of discharging after it has been discontinued, the appropriate Customs officer shall be immediately notified in writing. The inspector shall also inform the Customs officers at the port where the infestation is found and at such other ports as may be necessary of the requirement for fumigation and/or permission to move coastwise to another U.S. port for fumigation or other remedial measures.

(2) *Infestation in cargo compartments of means of conveyance* (*except aircraft*). When infestation is found in cargo compartments or in cargo of a means of conveyance, except aircraft, the inspector shall prescribe and supervise the application of such remedial measures as, in his opinion are necessary, with respect to the cargo and the portions of the means of conveyance which contain or contained or were contaminated by the infested cargo. If in the opinion of the inspector fumigation is the only available safeguard to eliminate the infestation, he shall order the owner to arrange for immediate fumigation of the infested portions of such means of conveyance and cargo. However, if such cargo compartments cannot be fumigated without fumigating the entire means of conveyance, the inspector may order the entire means of conveyance and cargo to be fumigated. The inspector shall notify the owner of the means of conveyance of such requirement and the owner shall arrange for immediate fumigation. Discharge of cargo shall be discontinued unless the inspector allows it to continue under safeguards to be prescribed by him. The provisions applicable to stores and storerooms in paragraph (d)(1) (ii) and (iii) of this section shall apply to cargo and cargo areas of such means of conveyance. Customs officers shall be informed as required in paragraph (d)(1)(iv) of this section.

(3) *Infestation in an aircraft.* If infestation is found in an aircraft, the inspector may apply seals as provided in § 330.110, and he may require such temporary safeguards as he deems necessary, including the discontinuance of further unloading or landing of any

products or articles except as authorized by him. Upon finding such infestation in an aircraft the inspector shall promptly notify the Plant Protection and Quarantine Programs of all circumstances and the temporary safeguards employed, and the Plant Protection and Quarantine Programs will specify the measures for eliminating the infestation which will not be deleterious to the aircraft or its operating components. Any insecticidal application required shall be approved by the Deputy Administrator for use in aircraft. If the aircraft is to depart from the territorial limits of the United States within 24 hours after the infestation is found, the inspector shall permit such departure in lieu of the application of other measures and shall prior to departure break any seals that would prevent access to the aircraft or safe operation thereof. Other seals shall remain intact at time of departure and shall be broken by the aircraft commander or a crew member upon his order only after the aircraft is beyond the territorial limits of the United States. Extension of the 24-hour period shall be given only under authority of the Deputy Administrator. The owner of the aircraft under notice of khapra beetle infestation which leaves the territorial limits of the United States before the infestation has been eradicated should arrange for eradication before returning the aircraft to the United States. Upon return to the United States, if the infestation is not eliminated to the satisfaction of the inspector, the aircraft shall be subject to the same disinfestation requirements and other safeguards immediately upon arrival in the United States. Customs officers shall be notified as required in paragraph (d)(1)(iv) of this section.

(4) *Precautions.* The owner of a means of conveyance required to be fumigated pursuant to this section shall arrange with a competent operator to apply the fumigant under the supervision of the inspector. The owner shall understand that if certain fumigants are used they may result in residues in or on foodstuffs which may render them unsafe for use as food items. He is hereby warned against such use unless as ascertains that the fumigated foodstuffs are fit for human consumption. It should also be understood by the owner that emergency measures prescribed by the inspector to safeguard against dissemination of infestation may have adverse effects on certain products and articles, and that the acceptance of fumigation as a requirement is an alternative to the immediate removal of the infested means of conveyance and any products and articles thereon, from the territorial limits of the United States. Products or articles in a means of conveyance, or compartments thereof, which may be exposed to methyl bromide or other remedial measures and may be adversely affected thereby, may be removed from the means of conveyance or compartments thereof prior to the application of the remedial measures if in the opinion of the inspector this can be done without danger of plant pest dissemination and under conditions authorized by him, for additional inspection and/or application of effective remedial measures.

[24 FR 10825, Dec. 29, 1959, as amended at 25 FR 8989, Sept. 20, 1960; 32 FR 6339, Apr. 21, 1967; 36 FR 24917, Dec. 24, 1971; 66 FR 21058, Apr. 27, 2001; 69 FR 12265, Mar. 16, 2004]

§ 330.107 Costs.

All costs (including those incurred under § 330.106 of this part by the government or the owner) incident to the inspection, handling, cleaning, safeguarding, treating, or other disposal of means of conveyance or products, articles, or plant pests under this part shall be borne by the owner. Services of the inspector during regularly assigned hours of duty at the usual places of duty shall be furnished without cost to the person requesting the services, unless a user fee is payable under § 354.3 of this chapter.

CROSS REFERENCE: See note following § 330.105.

[56 FR 14844, Apr. 12, 1991]

§ 330.108 Authority to issue administrative instructions.

The Deputy Administrator is authorized to issue the administrative instructions for which provision is made in the regulations in this part, for the purpose of preventing dissemination of plant pests into the United States or interstate. In addition, whenever the

Deputy Administrator shall find that existing conditions as to pest risk involved in the movement of plant pests, means of conveyance, or other products or articles to which the regulations in this part apply, make it safe to modify by making less stringent the restrictions contained in any of such regulations, he shall publish such findings in administrative instructions, specifying the manner in which the regulations shall be made less stringent whereupon such modification shall become effective.

§ 330.109 Caution.

In applying treatments or taking other measures prescribed in administrative instructions or by the inspector, it should be understood that inexactness or carelessness may result in injury or damage.

§ 330.110 Seals.

(a) *Use authorized; form.* Whenever, in the opinion of the inspector, it is necessary, as a safeguard in order to prevent the dissemination of plant pests into the United States, or interstate, seals may be applied to openings, packages, or articles requiring the security provided by such seals. The words ''openings, packages, or articles'' shall include any form of container, shelf, bin, compartment, or other opening, package, or article which the inspector may have occasion to seal in lieu of more drastic action or otherwise, as a safeguard against plant pest dissemination. The seals may be automatic metal seals or labels or tags and will be provided by the Plant Protection and Quarantine Programs. When they consist of a label or tag, they will be printed in black ink on yellow paper and read substantially as follows: ''Warning! The opening, package, or article to which this seal is affixed is sealed under authority of law. This seal is not to be broken while within the territorial limits of the United States except by, or under instructions of, an inspector.''

(b) *Breaking of seals.* Seals may be broken: (1) By an inspector; (2) by a Customs officer for Customs purposes, in which case the opening, package, or article will be resealed with Customs seals; (3) by the owner or his agent when the means of conveyance, product, or article has left the territorial limits of the United States; (4) by any person authorized by the inspector or the Deputy Administrator under conditions specified by the inspector or Deputy Administrator. No person shall break seals applied under authority of this section except as provided in this paragraph. The movement into or through the United States, or interstate, of any means of conveyance or product or article on which a seal, applied under this paragraph, has been broken in violation of this paragraph is hereby prohibited, except as authorized by an inspector.

(c) *Notice of sealing.* When an inspector seals any opening, product or article, he shall explain the purpose of such action to the owner or his representative and shall present him with a written notice of the conditions under which the seal may be broken, if requested to do so.

[25 FR 8990, Sept. 20, 1960, as amended at 36 FR 24917, Dec. 24, 1971]

§ 330.111 Advance notification of arrival of aircraft and watercraft.

The owner, operator, or other representative of any aircraft or watercraft entering the United States from a foreign country, or arriving in the continental United States from Hawaii or any territory or possession of the United States, shall provide every Plant Protection and Quarantine office (PPQ office) serving a port of arrival on the itinerary of the craft while in the United States with advance notification of intent to arrive at that port. This advance notification of arrival shall:

(a) Reach the appropriate PPQ office not less than 12 hours before the craft's estimated time of arrival at the port;

(b) Be communicated by radio, wire, telephone, or any other means; and

(c) Include the following information:

(1) The name or other identifying feature of the individual craft;

(2) The date and estimated time of arrival at the port;

(3) The location of arrival, providing the most site-specific data available, such as the dock, pier, wharf, berth, mole, anchorage, gate, or facility, and;

(4) The names of all foreign and non-Continental U.S. ports where any cargo, crew, or passenger destined for the continental United States has boarded the craft since its most recent arrival at a port in the United States.

(d) If the craft's estimated time of arrival changes by more than one hour, the PPQ office that serves the port of arrival must be notified and provided with updated information immediately.

(e) If the craft's site of arrival changes after a PPQ office has received advance notification of arrival, both that PPQ office and the newly affected PPQ office shall be notified of this change immediately. This applies, too, to site-specific changes involving watercraft.

(f) If the craft's point of arrival is an anchorage, the PPQ office shall be notified, as soon as possible after the craft's arrival at the anchorage, of the specific site, such as berth, mole, pier, to which the craft will be moving, as well as of its estimated time of arrival at that site.

(g) Aircraft and watercraft meeting any of the following conditions are exempt from the provisions in this section, and need not provide advance notification of arrival:

(1) The craft is not regularly used to carry passengers or cargo for a fee;

(2) The aircraft is making a flight scheduled in the Official Airline Guide, North American Edition, or the Official Airline Guide, Worldwide Edition, unless the scheduled time of arrival changes by more than one hour or the plane is diverted to another landing port;

(3) An inspector has precleared the aircraft in Hawaii, a territory or possession of the United States, or a foreign port, having determined that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR chapter III and 9 CFR chapter I; or

(4) Personnel of the United States armed forces, including the U.S. Coast Guard, in Hawaii, a territory or possession of the United States, or a foreign port, have precleared an aircraft, having determined that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR chapter III and 9 CFR chapter I.

(5) The owner, operator, or other representative of the aircraft or watercraft not leaving the United States has been informed in writing by a PPQ inspector that notification of intended arrival is not required at subsequent ports in the United States.

(Approved by the Office of Management and Budget under control number 0579–0054)

[52 FR 49344, Dec. 31, 1987]

Subpart—Movement of Plant Pests

§ 330.200 Movement of plant pests regulated; permits required.

No person shall knowingly move any plant pest into or through the United States from any place outside thereof, or interstate, or knowingly accept delivery of any plant pest so moving unless such movement is authorized under permit under this part and is made in accordance with the conditions therein and the provisions in this part. The movement of snails and slugs, as well as other plant pests, is governed by such provisions. Biological specimens of plant pests, in preservative or dried, may be imported without further restriction under this part, but subject to inspection on arrival in the United States to confirm the nature of the material and freedom from risk of plant pest dissemination.

§ 330.201 Applications for permits to move plant pests.

(a) *Into or through the United States from any place outside thereof.* Only persons resident in the United States may apply for permits to move plant pests into the United States from any place outside thereof. Persons resident in the United States proposing such movement into the United States, or any person proposing movement through the United States, of any plant pests shall first make application for permits authorizing such movement by submitting to the Plant Protection and Quarantine Programs the form provided therefor by the Plant Protection and Quarantine Programs, or by submitting in the form of a letter or other

written communication the following information insofar as is known to the applicant, for each kind of pest for which a permit is requested: (1) Scientific name of the pest, (2) stage, (3) quantity, (4) origin, (5) destination, (6) whether the pest is established in the State, Territory or other jurisdiction of destination in the United States, (7) method of shipment, (8) proposed port of first arrival in the United States, (9) approximate date of arrival, (10) number of parcels expected to be moved, (11) intended use, (12) measures to be employed to prevent danger of plant pest dissemination, and (13) method of final disposition. In addition, if host materials must necessarily accompany the plant pests, the application shall show the name of the host materials and the reasons it is necessary for them to accompany the plant pests. Applications for permits to move plant pests through the United States should state the name of the port of export instead of the information required by paragraph (a)(6) of this section. Any applicant for a permit to move plant pests into or through the United States from any place outside thereof will facilitate the consideration of his application by furnishing any additional information known to him concerning the economic importance of the pests and the justification for the movement.

(b) *Interstate* (*including interstate for export*). Persons proposing to move plant pests interstate shall first make application for permits authorizing such movement by submitting to the Plant Protection and Quarantine Programs the form provided therefor by the Plant Protection and Quarantine Programs or by submitting the required information in the form of a letter or other written communication showing all pertinent information specified in paragraph (a) of this section and also the approximate date of the movement, except that persons desiring to move plant pests interstate to a port in the United States for export to a place outside of the United States[1] shall use the form provided therefor by the Plant Protection and Quarantine Programs or submit to the Plant Protection and Quarantine Programs in the form of a letter or other written communication the following information for each kind of pest: Scientific name of the pest, stage, quantity, origin, destination, method of shipment, proposed port of export from the United States, approximate date of the movement, number of parcels to be moved, proposed use, and measures to be employed to prevent danger of plant pest dissemination during the interstate movement. However, in case it is proposed to move interstate, within or from an area quarantined under §§ 301.38, 301.45, 301.48, 301.52, 301.63, 301.64, 301.72, 301.76, 301.77, 301.78, 301.79, 301.80, or 301.81 of this chapter any plant pest covered by said section, the application should be made to the Plant Protection and Quarantine Programs of the Animal and Plant Health Inspection Service of the Department. In any case the applicant for a permit will facilitate the consideration of his application by furnishing any additional information known to him concerning the economic importance of the pests and the justification for the movement.

(Approved by the Office of Management and Budget under control number 0579–0054)

[24 FR 10825, Dec. 29, 1959, as amended at 36 FR 24917, Dec. 24, 1971; 37 FR 10554, May 25, 1972; 48 FR 57466, Dec. 30, 1983]

§ 330.202 Consideration of applications for permits to move plant pests.

The Deputy Administrator, upon the receipt of an application, made in accordance with § 330.201 (a) or (b), for a permit for movement of a plant pest into or through the United States from any place outside thereof, or interstate, shall consider the application on its merits.

(a) *Consultation*. He may consult with any Federal officials, the appropriate officials of any State, Territory, or

[1] Persons contemplating the shipment of plant pests to places outside the United States should make prior arrangements directly, or through the recipient, with the country of destination for the receipt of the plant pests into the country of destination. Many countries have laws governing the movement of plant pests into those countries, and therefore it is advisable to make advance arrangements for attaching permits, etc., as may be required by the countries of destination.

other jurisdiction in the United States in charge of research or regulatory programs relative to plant pests, and any other qualified governmental or private research laboratory, institution, or individual, for views on the danger of plant pest dissemination into the United States, or interstate, in connection with the movement proposed.

(b) *Inspection of premises.* The Deputy Administrator may inspect the site where plant pests are proposed to be handled in connection with or after their movement under permit to determine whether existing or proposed facilities will be adequate to prevent plant pest dissemination in case a permit is issued, provided that the person in possession thereof is the applicant or such inspection is otherwise authorized.

(Approved by the Office of Management and Budget under control number 0579–0054)

[24 FR 10825, Dec. 29, 1959, as amended at 48 FR 57466, Dec. 30, 1983]

§ 330.203 Action on applications for permits to move plant pests; form of and conditions in permits.

The Deputy Administrator, having considered an application for permit to move a plant pest, shall approve or deny the application in accordance with § 330.204. If the application is denied, the applicant shall be furnished the reasons therefor. If the application is approved, the Deputy Administrator shall issue the permit including any conditions which, in the opinion of the Deputy Administrator, are necessary to prevent dissemination of plant pests into the United States or interstate. Such conditions may include requirements for inspection of the premises where the plant pests are to be handled, after their movement under the permits, to determine whether the facilities thereat are adequate to prevent plant pest dissemination and the conditions of the permit are otherwise being observed. Permits authorizing movement of plant pests through the United States will include shipping instructions as to routing, labelling, and similar requirements as conditions of the permits. Any applicable conditions prescribed in administrative instructions may be incorporated in a written permit by citation, but shall be applicable whether or not so cited. The Deputy Administrator may, prior to the issuance of the permit, require the applicant to agree in writing to the conditions under which the plant pests will be safeguarded. The permits may be issued in a prescribed form or in letter form, or a combination thereof. A permit without conditions may be issued orally.

§ 330.204 Denial or cancellation of permits; reconsiderations.

(a) The Deputy Administrator will deny an application for a permit to move a plant pest when, in his opinion, such movement would involve a danger of dissemination of the pest. Danger of plant pest dissemination may be deemed to exist when:

(1) No acceptable safeguards adequate to prevent plant pest dissemination can be arranged;

(2) The destructive potential of the plant pest to plants, and parts and products thereof, should it escape despite proposed safeguards, outweighs the probable benefits to be derived from the proposed movement and use of the pest;

(3) The applicant, as a previous permittee, failed to maintain the safeguards or otherwise observe the conditions prescribed in a previous permit and failed to demonstrate his ability or intent to observe them in the future;

(4) The movement is adverse to the conduct of an eradication, suppression, control, or regulatory program of the Animal and Plant Health Inspection Service; or

(5) The movement is objected to in writing by an appropriate official of a State, Territory or possession, or the District of Columbia on the ground it will involve a danger of dissemination of the plant pest into the State, Territory or possession, or District.

(b) The Deputy Administrator may cancel any outstanding permit whenever:

(1) Information is received subsequent to the issuance of the permit of circumstances that constitute cause for the denial of an application for permit under paragraph (a) of this section; or

(2) The permittee has not maintained the safeguards or otherwise observed

the conditions specified in the permit or in any applicable regulations or administrative instructions.

(c) Any person denied a permit, or whose permit has been canceled, may request the Deputy Administrator in person or in writing for a reconsideration, and may submit any additional information he may have to support the original application.

§ 330.205 Disposal of plant pests when permits are canceled.

When an outstanding permit for the movement of a plant pest is canceled by the Deputy Administrator and not reinstated under § 330.204(c), the further movement of the plant pest covered thereby into or through the United States, or interstate, is prohibited by the Plant Protection Act unless authorized in another permit. The permittee should arrange for disposal of the plant pest involved in a manner satisfactory to the Deputy Administrator to prevent plant pest dissemination. The Deputy Administrator may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any plant pest which is moving without compliance with any conditions in the permit or the provisions of this part or after the permit has been canceled.

[24 FR 10825, Dec. 29, 1959, as amended at 66 FR 21058, Apr. 27, 2001]

§ 330.206 Permits for plant pest movement associated with National Defense projects.

The Deputy Administrator will facilitate research associated with National Defense projects through issuance of permits for movement of plant pests for such research, upon receiving assurance satisfactory to him that adequate safeguards will surround utilization of the plant pests to prevent their dissemination.

§ 330.207 Permits for movement of organisms issued by other agencies.

Inspectors shall recognize permits for the movement of organisms issued under other acts by other Federal agencies. When such organisms are also plant pests, any further conditions of movement to carry out the purposes of the Plant Protection Act which have been prescribed in administrative instructions, or in correspondence concerning a single shipment, shall be complied with but no additional permit will be required under this part.

[24 FR 10825, Dec. 29, 1959, as amended at 66 FR 21058, Apr. 27, 2001]

§ 330.208 Courtesy permits.

The Deputy Administrator may issue permits for the movement into or through the United States, or interstate, or organisms which are not subject to regulation under the Plant Protection Actor any other act, as a courtesy to facilitate movement when the movement might otherwise be impeded because of the similarity of the organisms with others regulated under the Plant Protection Act. He may likewise issue such permits on behalf of any agency requesting such action as a courtesy to facilitate movement for organisms not subject to regulation under the Plant Protection Act but subject to regulation under some other act.

[24 FR 10825, Dec. 29, 1959, as amended at 66 FR 21058, Apr. 27, 2001]

§ 330.209 Permits for means of conveyance.

No permit shall be required for movement into or through the United States from any place outside thereof, or interstate, of a means of conveyance unless the primary purpose of such movement of the means of conveyance is to move plant pests.

§ 330.210 Packing materials and containers for plant pest movement; host materials.

Plant pests moved into or through the United States, or interstate, must be free of soil, except when the Deputy Administrator approves in the permit the movement of soil with the plant pest. Subject to this exception, only

approved packing materials are to be employed in the shipment of plant pests. Approved packing materials for the movement of plant pests under this part will be prescribed in administrative instructions or approved in specific cases by the Deputy Administrator. Such actions will be coordinated with and may supplement any requirements of the Post Office Department governing packing and packaging of any materials for movements covered by the postal laws and regulations. All containers shall be stoutly constructed so as to prevent breakage in transit and danger of plant pest dissemination and shall be labeled in accordance with § 330.211. The Deputy Administrator may allow the movement of host materials with plant pests under permits when they must necessarily accompany the pests, although such movement is otherwise barred under the Plant Protection Act.

[24 FR 10825, Dec. 29, 1959, as amended at 66 FR 21058, Apr. 27, 2001]

§ 330.210a Administrative instructions listing approved packing materials for plant pests.

(a) The following materials are approved as packing materials for use with any shipment of plant pests in accordance with § 330.210:

(1) Absorbent cotton or processed cotton padding free of cottonseed.

(2) Cellulose materials.

(3) Excelsior.

(4) Felt.

(5) Ground peat (peat moss).

(6) Paper or paper products.

(7) Phenolic resin foam.

(8) Sawdust.

(9) Sponge rubber.

(10) Thread waste; twine; or cord.

(11) Vermiculite.

(b) Advance approval for the use of any other packing material for any specific movement should be obtained from the Deputy Administrator.

§ 330.211 Labeling of plant pests for movement under permits.

(a) *Interstate movement.* For interstate movements of plant pests a label shall be attached to each parcel containing the pests as evidence that the movement of the plant pests is authorized. Such label shall also disclose the contents of the parcel.

(b) *Movement into or through the United States from places outside thereof by mail or cargo.* (1) When a permit authorizing the movement of plant pests into the United States from any place outside thereof is issued to an applicant under this part, it will be accompanied by distinctive labels, with instructions for their use by the foreign shipper. Such labels will be issued in quantity sufficient to permit attaching one to each parcel to be moved. The labels will direct the parcels to specified inspection stations of the Plant Protection and Quarantine Programs, or other designated points, for clearance. The stations will be notified by the Deputy Administrator in advance of the expected arrival of the plant pests. Plant pests so moved by mail may be refused entry unless the containers thereof bear such labels. Cargo shipments of plant pests so moved may be refused entry unless they bear such labels or are otherwise plainly marked to identify the contents.

(2) Any labelling requirements with respect to the movement of plant pests through the United States will be included in shipping instructions issued as conditions of the permits.

(c) *Misuse of labels.* No labels unused in accordance with the terms of the permit may be used for the movement of any other plant pest. The Plant Protection Act provides for a penalty[2] for

[2] Section 424 of the Plant Protection Act (7 U.S.C. 7734) provides that persons who violate this act, or who forge, counterfeit or—without authority from the Secretary—use, alter, deface, or destroy any certificate, permit or other document may, after notice and opportunity for a hearing, be assessed a civil penalty that does not exceed the greater of: (a) $50,000 for individuals, except that the civil penalty may not exceed $1,000 in the case of an initial violation by an individual moving regulated articles not for monetary gain; $250,000 for any other person or legal entity, such as partnerships, corporations, associations, or joint ventures; and $500,000 for all violations adjudicated in a single proceeding; or (b) twice the gross pecuniary gain derived from or loss caused by any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for by this act. Section 424 of the Plant Protection Act

Continued

the misuse of such labels. Any unauthorized movement of plant pests under a label will be refused by the inspector, and the plant pests may be destroyed or otherwise dealt with as set forth in § 330.106 if deemed necessary as an emergency measure.

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[24 FR 10825, Dec. 29, 1959, as amended at 48 FR 57466, Dec. 30, 1983; 66 FR 21058, Apr. 27, 2001]

§ 330.212 Movement of plant pests by baggage.

Persons proposing to move plant pests into or through the United States from any place outside thereof, or from any Territory or possession into or through any other Territory or possession, or the Continental United States, by baggage, shall show the permit authorizing the movement to the inspector upon arrival at the port where the baggage is inspected. The conditions specified for the movement must be observed. The inspector will insure that the movement is handled in accordance with the terms of the permit. If it is necessary to move the plant pest to another place for clearance, the owner will be responsible for all costs incidental to such forwarding. Pending forwarding, the inspector will specify and supervise the application of safeguards against danger of plant pest dissemination and may retain custody of the pests until forwarded.

Subpart—Movement of Soil, Stone, And Quarry Products

§ 330.300 Soil from foreign countries or Territories or possessions.[1]

No soil shall be moved into or through the United States from any place outside thereof or from any Territory or possession into or through any other Territory or possession or the Continental United States, whether the soil is moved as such or incidentally adhering to means of conveyance or other articles, except as authorized in § 318.60 or § 319.69 of this chapter, or this subpart.

(a) *Permits authorized.* The Deputy Administrator may issue permits under this section for movements of soil not governed by § 318.60 or § 319.69 of this chapter, for research, analytical, religious, ceremonial, patriotic, or similar purposes, or such other purposes as he shall deem consistent with the objectives of this part, specifying in the permit or in the related correspondence, the safeguards, including methods of treatment, or other conditions which he deems necessary for the purpose of preventing the dissemination of plant pests into the United States or interstate. Whenever it is possible to formulate a general rule specifying such conditions, it shall be promulgated in administrative instructions and the applicable provisions thereof may be incorporated into a permit by citation, but shall be applicable whether or not so cited.

(b) *Application for permits.* Only persons resident in the United States may apply for permits under this section to move soil into the United States from any place outside thereof, or from any territory or possession into or through any other Territory or possession or the Continental United States. Persons resident in the United States contemplating such movements, or any persons contemplating movement through the United States, of soil under this section shall first make application for permits authorizing such movement by submitting to the Plant Protection and Quarantine Programs the form provided therefor by the Plant Protection and Quarantine Programs or by submitting, in the form of a letter or other written communication, the following information: Origin of the shipment, destination, quantity, method of shipment, proposed port of first arrival in the United States, port of export (if applicable), approximate date of arrival in the United States, intended use, measures to be employed to prevent

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also provides penalties for criminal violations, under which knowing violators of the act may be found guilty of a misdemeanor and, upon conviction, fined in accordance with title 18 of the United States Code, imprisoned for a period not to exceed 1 year, or both.

[1] The movement of soil from Puerto Rico into or through any other State, Territory, or District of the United States is also subject to the provisions of the imported fire ant quarantine and regulations contained in 7 CFR 301.81 *et seq.*

danger of plant pest dissemination, method of final disposition, and the number of parcels expected to be moved. In acting upon the application for permits for such movement of soil, the Deputy Administrator will follow the procedures outlined in § 330.202 for the consideration of applications for permits to move plant pests insofar as they are applicable.

(c) *Issuance of permits; conditions of permits.* Upon the approval of an application for a permit authorizing the movement of soil under this section, the permit will be issued. The permit may contain any conditions which are necessary, in the opinion of the Deputy Administrator, to prevent dissemination of plant pests into the United States or interstate, including conditions with respect to routing, packing, and labeling of the soil. The Deputy Administrator may require the applicant to agree in writing to such conditions prior to the issuance of the permit. The importer will receive, as a part of the permit, information on the manner in which the importation is to be made. A permit without conditions may be issued orally.

(d) *Containers; labels.* All containers for soil moved under this section shall be stoutly constructed so as to prevent breakage in transit and danger of plant pest dissemination and shall be appropriately labeled as to contents. If the soil is moved by mail, special mailing labels will be issued to the importer, with instructions for their use, which he is to send to the foreign shipper. The quantity of mailing labels issued will be sufficient for the foreign shipper to attach one to each parcel moved by mail. Such mailing labels will indicate to the postal and the plant quarantine officials that the movement is authorized under the conditions specified in this permit. Importations arriving by mail without labels will be subject to refusal of entry into the United States, or interstate movement, by the inspector unless treated, at the expense of the owner, in a manner to remove danger of plant pest dissemination. The Deputy Administrator may issue mailing labels for movement into or through the United States from any place outside thereof, or from any Territory or possession into or through any other Territory or possession of the continental United States, of earth other than soil when the movement might otherwise be impeded because of the similarity to soil subject to this section.

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[24 FR 10855, Dec. 29, 1959, as amended at 47 FR 36103, Aug. 19, 1982; 48 FR 57466, Dec. 30, 1983; 62 FR 65009, Dec. 10, 1997]

§ 330.300a Administrative instructions exempting soil from parts of Canada from certain restrictions.

Soil of Canadian origin except soil from Newfoundland and the Land District of Central Saanich on Vancouver Island of British Columbia may be moved into or through the United States from Canada free from the permit requirements of § 330.300 and the release requirements of § 330.105 but subject to inspection under § 330.105 and disposal under § 330.106, if the inspection discloses any plant pest new to or not theretofore widely prevalent or distributed within and throughout the United States. Such soil is also subject to all applicable requirements under part 319 of this chapter.[1]

[34 FR 13148, Aug. 14, 1969, as amended at 62 FR 50239, Sept. 25, 1997]

§ 330.301 Stone and quarry products from certain areas in Canada.

Stone and quarry products from areas in Canada infested with the gypsy moth may be moved from Canada into or through the United States only into or through areas regulated by the gypsy moth and browntail moth quarantine and regulations in §§ 301.45, 301.45–1 et seq. of this chapter; or into or through other areas in the United States under conditions paralleling the requirements of said quarantine and regulations for movement of stone and quarry products from said regulated areas into such other areas of the United States.

§ 330.302 Domestic movements of earth (including soil), stone, etc.

The interstate movement from regulated areas in the Continental United

[1] Sod from Canada is regulated by § 319.37–5 of this chapter.

States of earth (including soil), stone, quarry products, and similar substances is regulated in §§ 301.45, 301.48, 301.72, 301.77, 301.78, 301.79, 301.80, and 301.81 of this chapter and may be made only in accordance with the requirements of these sections. Any such movement of earth, stone, quarry products and similar substances which may hereafter be regulated in part 301 of this chapter may likewise be made only in accordance with the requirements of said part. The interstate movement of such materials of United States origin, from any place in the Continental United States, is not regulated by this part.

Subpart—Garbage

SOURCE: 71 FR 49314, Aug. 23, 2006, unless otherwise noted.

§ 330.400 Regulation of certain garbage.

(a) *Certain interstate movements and imports*—(1) *Interstate movements of garbage from Hawaii and U.S. territories and possessions to other States.* Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the U.S. Virgin Islands, Republic of the Marshall Islands, and the Republic of Palau are hereby quarantined, and the movement of garbage therefrom to any other State is hereby prohibited except as provided in this subpart in order to prevent the introduction and spread of exotic plant pests and diseases.

(2) *Imports of garbage.* In order to protect against the introduction of exotic animal and plant pests and diseases, the importation of garbage from all foreign countries except Canada is prohibited except as provided in § 330.401(b).

(b) *Definitions—Agricultural waste.* By-products generated by the rearing of animals and the production and harvest of crops or trees. Animal waste, a large component of agricultural waste, includes waste (*e.g.*, feed waste, bedding and litter, and feedlot and paddock runoff) from livestock, dairy, and other animal-related agricultural and farming practices.

Approved facility. A facility approved by the Administrator, Animal and Plant Health Inspection Service, upon his determination that it has equipment and uses procedures that are adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that it is certified by an appropriate Government official as currently complying with the applicable laws for environmental protection.

Approved sewage system. A sewage system approved by the Administrator, Animal and Plant Health Inspection Service, upon his determination that the system is designed and operated in such a way as to preclude the discharge of sewage effluents onto land surfaces or into lagoons or other stationary waters, and otherwise is adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that is certified by an appropriate Government official as currently complying with the applicable laws for environmental protection.

Carrier. The principal operator of a means of conveyance.

Garbage. All waste material that is derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material.

Incineration. To reduce garbage to ash by burning.

Interstate. From one State into or through any other State.

Sterilization. Cooking garbage at an internal temperature of 212 °F for 30 minutes.

Stores. The food, supplies, and other provisions carried for the day-to-day operation of a conveyance and the care and feeding of its operators.

Yard waste. Solid waste composed predominantly of grass clippings, leaves, twigs, branches, and other garden refuse.

§ 330.401 Garbage generated onboard a conveyance.

(a) *Applicability.* This section applies to garbage generated onboard any means of conveyance during international or interstate movements as provided in this section and includes food scraps, table refuse, galley refuse,

food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on the means of conveyance. This section also applies to meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.

(1) Not all garbage generated onboard a means of conveyance is regulated for the purposes of this section. Garbage regulated for the purposes of this section is defined as ''regulated garbage'' in paragraphs (b) and (c) of this section.

(2) Garbage that is commingled with regulated garbage is also regulated garbage.

(b) *Garbage regulated because of movements outside the United States or Canada.* For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has been in any port outside the United States and Canada within the previous 2-year period. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1: Aircraft.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (d) of this section if the following conditions are met when the garbage is on or removed from the aircraft:

(i) The aircraft had previously been cleared of all garbage and of all meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and the items previously cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(ii) After the garbage and stores referred to in paragraph (b)(1)(i) of this section were removed, the aircraft has not been in a non-Canadian foreign port.

(2) *Exception 2: Other conveyances.* Garbage on or removed in the United States from a means of conveyance other than an aircraft is exempt from requirements under paragraph (d) of this section if the following conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector stating the following:

(A) That the means of conveyance had previously been cleared of all garbage and of all meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and the items previously cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(B) That the means of conveyance had then been cleaned and disinfected in the presence of the inspector; and

(ii) Since being cleaned and disinfected, the means of conveyance has not been in a non-Canadian foreign port.

(c) *Garbage regulated because of certain movements to or from Hawaii, territories, or possessions.* For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if at the time the garbage is on or removed from the means of conveyance, the means of conveyance has moved during the previous 1-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii, to any territory or possession from any other territory or possession or from Hawaii, or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1: Aircraft.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (d) of this section if the following two conditions are met when the garbage is on or removed from the aircraft:

(i) The aircraft had been previously cleared of all garbage and all fresh fruits and vegetables, and the items previously cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(ii) After the garbage and stores referred to in paragraph (c)(1)(i) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(2) *Exception 2: Other conveyances.* Garbage on or removed from a means of conveyance other than an aircraft is exempt from requirements under paragraph (d) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector stating that the means of conveyance had been cleared of all garbage and all fresh fruits and vegetables; and the items previously cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(ii) After being cleared of the garbage and stores referred to in paragraph (c)(2)(i) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(d) *Restrictions on regulated garbage.*

(1) Regulated garbage may not be disposed of, placed on, or removed from a means of conveyance except in accordance with this section.

(2) Regulated garbage is subject to general surveillance for compliance with this section by inspectors and to disposal measures authorized by the Plant Protection Act and the Animal Health Protection Act to prevent the introduction and dissemination of pests and diseases of plants and livestock.

(3) All regulated garbage must be contained in tight, covered, leak-proof receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptacles shall be contained inside the guard rail if on a watercraft. Such regulated garbage shall not be unloaded from such means of conveyance in the United States unless such regulated garbage is removed in tight, covered, leak-proof receptacles under the direction of an inspector to an approved facility for incineration, sterilization, or grinding into an approved sewage system, under direct supervision by such an inspector, or such regulated garbage is removed for other handling in such manner and under such supervision as may, upon request in specific cases, be approved by the Administrator as adequate to prevent the introduction and dissemination of plant pests and animal diseases and sufficient to ensure compliance with applicable laws for environmental protection. *Provided that*, a cruise ship may dispose of regulated garbage in landfills at Alaskan ports only, if and only if the cruise ship does not have prohibited or restricted meat or animal products on board at the time it enters Alaskan waters for the cruise season, and only if the cruise ship, except for incidental travel through international waters necessary to navigate safely between ports, remains in Canadian and U.S. waters off the west coast of North America, and calls only at continental U.S. and Canadian ports during the entire cruise season.

(i) Application for approval of a facility or sewage system may be made in writing by the authorized representative of any carrier or by the official having jurisdiction over the port or place of arrival of the means of conveyance to the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. The application must be endorsed by the operator of the facility or sewage system.

(ii) Approval will be granted if the Administrator determines that the requirements set forth in this section are met. Approval may be denied or withdrawn at any time, if the Administrator determines that such requirements are not met, after notice of the proposed denial or withdrawal of the approval and the reasons therefor, and an opportunity to demonstrate or achieve compliance with such requirements, has been afforded to the operator of the facility or sewage system and to the applicant for approval. However, approval may also be withdrawn without such prior procedure in any case in which the public health, interest, or safety requires immediate action, and in such case, the operator of the facility or sewage system and the applicant for approval shall promptly thereafter be given notice of the withdrawal and the reasons therefor and an opportunity to show cause why the approval should be reinstated.

(e) The Plant Protection and Quarantine Programs and Veterinary Services, Animal, and Plant Health Inspection Service, will cooperate with other Federal, State, and local agencies responsible for enforcing other statutes and regulations governing disposal of the regulated garbage to the end that such disposal shall be adequate to prevent the dissemination of plant pests and livestock or poultry diseases and comply with applicable laws for environmental protection. The inspectors, in maintaining surveillance over regulated garbage movements and disposal, shall coordinate their activities with the activities of representatives of the Environmental Protection Agency and other Federal, State, and local agencies also having jurisdiction over such regulated garbage

§ 330.402 Garbage generated in Hawaii.

(a) *Applicability*. This section applies to garbage generated in households, commercial establishments, institutions, and businesses prior to interstate movement from Hawaii, and includes used paper, discarded cans and bottles, and food scraps. Such garbage includes, and is commonly known as, municipal solid waste.

(1) Industrial process wastes, mining wastes, sewage sludge, incinerator ash, or other wastes from Hawaii that the Administrator determines do not pose risks of introducing animal or plant pests or diseases into the continental United States are not regulated under this section.

(2) The interstate movement from Hawaii to the continental United States of agricultural wastes and yard waste (other than incidental amounts (less than 3 percent) that may be present in municipal solid waste despite reasonable efforts to maintain source separation) is prohibited.

(3) Garbage generated onboard any means of conveyance during interstate movement from Hawaii is regulated under § 330.401.

(b) *Restrictions on interstate movement of garbage.* The interstate movement of garbage generated in Hawaii to the continental United States is regulated as provided in this section.

(1) The garbage must be processed, packaged, safeguarded, and disposed of using a methodology that the Administrator has determined is adequate to prevent the introduction or dissemination of plant pests into noninfested areas of the United States.

(2) The garbage must be moved under a compliance agreement in accordance with § 330.403. APHIS will only enter into a compliance agreement when the Administrator is satisfied that the Agency has first satisfied all its obligations under the National Environmental Policy Act and all applicable Federal and State statutes to fully assess the impacts associated with the movement of garbage under the compliance agreement.

(3) All such garbage moved interstate from Hawaii to any of the continental United States must be moved in compliance with all applicable laws for environmental protection.

§ 330.403 Compliance agreement and cancellation.

(a) Any person engaged in the business of handling or disposing of garbage in accordance with this subpart must first enter into a compliance agreement with the Animal and Plant Health Inspection Service (APHIS). Compliance agreement forms (PPQ

Form 519) are available without charge from local USDA/APHIS/Plant Protection and Quarantine offices, which are listed in telephone directories.

(b) A person who enters into a compliance agreement, and employees or agents of that person, must comply with the following conditions and any supplemental conditions which are listed in the compliance agreement, as deemed by the Administrator to be necessary to prevent the dissemination into or within the United States of plant pests and livestock or poultry diseases:

(1) Comply with all applicable provisions of this subpart;

(2) Allow inspectors access to all records maintained by the person regarding handling or disposal of garbage, and to all areas where handling or disposal of garbage occurs;

(3)(i) If the garbage is regulated under §330.401, remove garbage from a means of conveyance only in tight, covered, leak-proof receptacles;

(ii) If the garbage is regulated under §330.402, transport garbage interstate in packaging approved by the Administrator;

(4) Move the garbage only to a facility approved by the Administrator; and

(5) At the approved facility, dispose of the garbage in a manner approved by the Administrator and described in the compliance agreement.

(c) Approval for a compliance agreement may be denied at any time if the Administrator determines that the applicant has not met or is unable to meet the requirements set forth in this subpart. Prior to denying any application for a compliance agreement, APHIS will provide notice to the applicant thereof, and will provide the applicant with an opportunity to demonstrate or achieve compliance with requirements.

(d) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator. This administrative remedy must be exhausted before a person can file suit in court challenging the cancellation of a compliance agreement.

(e) Where a compliance agreement is denied or canceled, the person who entered into or applied for the compliance agreement may be prohibited, at the discretion of the Administrator, from handling or disposing of regulated garbage.

(Approved by the Office of Management and Budget under control numbers 0579–0015, 0579–0054, and 0579–0292)

PART 331—POSSESSION, USE, AND TRANSFER OF SELECT AGENTS AND TOXINS

Sec.

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AUTHORITY: 7 U.S.C. 8401; 7 CFR 2.22, 2.80, and 371.3.