

§ 330.403

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

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

SOURCE: 70 FR 13278, Mar. 18, 2005, unless otherwise noted.

§ 331.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

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

Attorney General. The Attorney General of the United States or any person authorized to act for the Attorney General.

Biological agent. Any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substance, or any naturally occurring, bioengineered, or synthesized component of any such microorganism or infectious substance, capable of causing:

(1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) Deterioration of food, water, equipment, supplies, or material of any kind; or

(3) Deleterious alteration of the environment.

Centers for Disease Control and Prevention (CDC). The Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

Diagnosis. The analysis of specimens for the purpose of identifying or confirming the presence or characteristics of a select agent or toxin, provided that such analysis is directly related to protecting the public health or safety, animal health or animal products, or plant health or plant products.

Entity. Any government agency (Federal, State, or local), academic institution, corporation, company, partnership, society, association, firm, sole proprietorship, or other legal entity.

HHS Secretary. The Secretary of the Department of Health and Human Services or his or her designee, unless otherwise specified.

HHS select agent and/or toxin. A biological agent or toxin listed in 42 CFR 73.3.

Import. To move into, or the act of movement into, the territorial limits of the United States.

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

Permit. A written authorization by the Administrator to import or move interstate select agents or toxins, under conditions prescribed by the Administrator.

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