

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

9 CFR Part 94

[Docket No. 05-002-2]

Interstate Movement of Garbage From Hawaii; Municipal Solid Waste

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to certain garbage to provide for the interstate movement of garbage from Hawaii subject to measures designed to protect against the dissemination of plant pests into noninfested areas of the continental United States. We are proposing this action upon request in order to provide the State of Hawaii with additional waste disposal options, and after determining that the action would not result in the introduction of plant or animal pests or diseases into the continental United States from Hawaii. We are also proposing to make other amendments to the garbage regulations to clarify their intent and make them easier to understand.

DATES: We will consider all comments that we receive on or before May 19, 2006.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the lower "Search Regulations and Federal Actions" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS-2005-0047 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can

be viewed using the "Advanced Search" function in Regulations.gov.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05-002-2, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 05-002-2.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Shannon Hamm, Assistant Deputy Administrator, Policy and Program Development, APHIS, 4700 River Road Unit 20, Riverdale, MD 20737-1231; (301) 734-4957.

SUPPLEMENTARY INFORMATION:

Background

Under 7 CFR 330.400 and 9 CFR 94.5 (referred to elsewhere in this document as the regulations), the Animal and Plant Health Inspection Service (APHIS) regulates the importation and interstate movement of garbage that may pose a risk of introducing or disseminating animal or plant pests or diseases that are new to or not widely distributed within the United States. Not all movements of waste material are regulated by APHIS;¹ only movements of waste that meets APHIS's definition of "garbage" are regulated, and even then, only under certain circumstances. Under the regulations, the term "garbage" is defined as "all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal

¹ The operation of landfills and incinerators and the intrastate and interstate movement of garbage are regulated predominantly by State and local governments. The U.S. Environmental Protection Agency (EPA) regulates the interstate movement of hazardous wastes. See EPA's Web site for additional information: <http://www.epa.gov/epaoswer/osw/index.htm>.

(including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including 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 means of conveyance." Garbage also means "meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed."

Waste material that meets the definition of garbage is regulated by APHIS if it is removed from a means of conveyance that:

- Within the last 2 years, has been in any port outside the United States or Canada; or
- Within the last year, has moved from Hawaii or a U.S. Territory to another U.S. State.²

However, garbage onboard a conveyance that meets one of the two conditions above may be exempted from regulation if the conveyance is cleared of all regulated garbage, and after cleaning and disinfection, an inspector certifies that the conveyance contains no garbage that poses a risk of pest introduction into the United States. Garbage from Canada is also exempted from regulation.

The regulations were established to address the risk posed by garbage that originates on or is onboard conveyances that have been located in areas where exotic animal or plant pests or diseases are present. Such garbage includes waste generated during the course of commercial and private air travel and commercial or private transit of goods or persons by sea. The regulations were not intended to address risks posed by movements of municipal solid waste.

Due to a limited availability of landfill space in Hawaii, business interests and public officials are exploring other options for disposal of the State's waste. These persons have requested that APHIS allow the interstate movement of municipal solid waste from Hawaii. We believe the regulations require amendment to provide for the movement of garbage generated in Hawaii.

² "State" is defined as any of the 50 States and any U.S. territory or possession.

Therefore, in this document, we are proposing to amend our regulations to clearly provide for the interstate movement of garbage from Hawaii to the continental United States. We are also proposing to make miscellaneous amendments to the regulations to clarify their intent and make them easier to understand.

Proposed Amendments to the Regulations

Under the proposed regulations, waste from Hawaii that does not pose plant health risks, such as industrial process wastes, mining wastes, sewage sludge, incinerator ash, or other waste, would not be regulated by APHIS.³ We would also propose that only municipal solid waste may be imported from Hawaii under the regulations, and that such waste may not include agricultural wastes or yard wastes.⁴ The exclusion of agricultural wastes and yard wastes reduces plant pest risk by limiting the amount of Hawaiian waste material that is likely to contain plant pests. If waste moved interstate from Hawaii contained exclusively or mostly plant material, the plant pest risk associated with the waste would be considerably higher. These conditions are consistent with the assumptions of our risk analysis and an environmental assessment (described later in this document), as well as with the requests to allow the interstate movement of municipal solid waste from Hawaii.

The proposed regulations, which would be contained in both new 7 CFR 330.402 and revised 9 CFR 94.5(d), would require that all municipal solid waste moved interstate from Hawaii to any area of the continental United States 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;
- Moved under a compliance agreement between the person handling or disposing of garbage and APHIS, and in accordance with any conditions that are stipulated in the compliance agreement to address particular pest risks or environmental hazards. APHIS will only enter into a compliance agreement when the Administrator is satisfied that the Agency has first satisfied its obligations under the National Environmental Policy Act

³ Such waste becomes regulated garbage if it is associated or commingled with other waste material that meets the definition of garbage contained in the proposed regulations.

⁴ Definitions for agricultural waste and yard waste can be found in the proposed regulations.

(NEPA) and other statutes to assess the impacts associated with the movement of garbage to be allowed under the compliance agreement; and

- Moved in compliance with all applicable laws for environmental protection.

Approved Methodologies

In response to requests by private waste disposal companies, we have evaluated the risk of plant pest introduction posed by the movement of municipal solid waste that is shredded, compressed, and wrapped in adhesive-backed plastic film barriers, and that would then be shipped under certain safeguards from Hawaii to the continental United States. Our analysis did not evaluate the risk posed by animal pests or diseases because there are no quarantine significant animal pests or diseases in Hawaii.

Our analysis of the risks associated with movement of municipal solid waste by this means is contained in a risk assessment entitled, "The Risk of Introduction of Pests to the Continental United States via Plastic-Baled Municipal Solid Waste from Hawaii" (March 2006). The risk assessment is available from the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov.).

Airtight enclosure of municipal solid waste while in transit from Hawaii until burial in the United States would mitigate the risks of introduction and dissemination of plant pests that might be present inside of the bales, provided the bales remain intact throughout movement, and until burial in a landfill. Therefore, the risk assessment focused upon the soundness of baling technology and the safety of the general pathway. It considered only those processes likely to apply to all future proposals to transport baled solid waste from Hawaii, since some aspects of the shipping and disposal pathway cannot be evaluated until the actual destination is known, and as such, risks posed by shipment to individual disposal sites would need to be evaluated separately for each particular proposal to identify any significant risk factors.

Manufacturer and independent research indicates that the baling technology performs well and will mitigate the risk from all types of plant pests. In particular, insects and some pathogens are unlikely to survive in the bales because of compression, anoxia, and the absence of hosts. Other procedures, such as staging of bales prior to transport, bale construction,

monitoring during transport, and burial in regulated landfills, should adequately protect against escapes via accidental ruptures and punctures during handling and transport. It is worth noting that the risk assessment considers not only pests contained inside the bales, but also those that might attach themselves as hitchhikers on the outside of bales, such as snails and slugs.

The proposed regulations are designed to allow for the approval of various safeguarding methodologies for garbage shipped interstate from Hawaii, including the methodology evaluated in the risk assessment. Persons seeking to move municipal solid waste interstate from Hawaii using a methodology different from that evaluated in the risk assessment are advised that such movements would likely require the completion of another risk assessment. Any shipments of municipal solid waste under the proposed regulations would only be allowed subject to a compliance agreement approved by the Administrator, based on his or her determination that the waste would be packaged and shipped using a method equivalent to that evaluated in the risk assessment, or using another method that has been formally evaluated, and on which public comment has been solicited prior to its approval.

We previously made our risk assessment available for public review and comment in conjunction with a notice of availability of an environmental assessment published in the **Federal Register** on May 20, 2005 (70 FR 29269).

Compliance Agreements

The risk assessment concluded that if proper procedures are followed, transportation of municipal solid waste from Hawaii in bales poses an insignificant risk of pest introduction and dissemination. The risk assessment also contains a recommendation that the pathway be monitored to ensure that pathway processes and compliance do not differ significantly from what was analyzed in the assessment. One of the functions of any compliance agreement would be to ensure that the pathway is monitored.

The existing regulations require that persons engaged in the business of handling or disposing of regulated garbage operate in accordance with a compliance agreement. Persons operating under a compliance agreement are allowed to move garbage without the direct supervision of an inspector. Under this proposed rule, persons moving municipal solid waste from Hawaii would be required to enter into a compliance agreement. However,

as stated elsewhere in this document, under the proposed regulations, APHIS would only enter into a compliance agreement for the interstate movement of garbage from Hawaii if the pest and environmental risks posed by such movements have been analyzed by APHIS, subjected to public comment, and subsequently approved by the Administrator. This matter is described in detail in the following section.

Environmental Protection

Under the proposed regulations, any movement of municipal solid waste from Hawaii to the continental United States would also have to be in compliance with all applicable laws for environmental protection. While APHIS is not responsible for the enforcement of specific Federal, State, and local environmental laws, we are responsible for ensuring that our regulations and programs are subjected to proper analysis under the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Endangered Species Act, and other statutes that are intended to protect the environment.

In accordance with NEPA, we have prepared an environmental assessment, titled "Movement of Plastic-Baled Municipal Solid Waste from Hawaii to the Continental United States (May 2005)," that examines the potential environmental effects associated with moving garbage interstate from Hawaii to the continental United States subject to the same pest risk mitigation measures described in the risk assessment. We made a draft of this environmental assessment available to the public for comment through a notice published in the **Federal Register** on May 20, 2005 (70 FR 29269). We received two comments on the environmental assessment.⁵ In response to one comment, we revised the description of the purpose and need for the action in the environmental assessment to reflect that this action is intended simply to provide an alternative means of dealing with disposal of municipal solid waste in Hawaii, as requested by businesses and public officials in that State. The second commenter requested that APHIS provide additional information on the potential environmental consequences of allowing garbage to move interstate from Hawaii. We developed a list of

exotic and quarantine-significant plant pests that exist in Hawaii; however, any environmental effects that could result from the introduction of pests contained in that list, as well as any response to the other issues raised by the commenter will be addressed as we prepare site-specific environmental assessments for movements of garbage from Hawaii. Those assessments will be prepared and made available for public comment as requests for compliance agreements are made.

In this document, we are again making our environmental assessment, titled "Movement of Plastic-Baled Municipal Solid Waste from Hawaii to the Continental United States (March 2006)," available to the public for review and comment. The environmental assessment is available from the person listed under **FOR FURTHER INFORMATION CONTACT** and on the Regulations.gov Web site. Copies of the environmental assessment are also available for public inspection in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule).

The environmental assessment documents our review and analysis of environmental impacts associated with, and alternatives to, the proposed action and has been prepared in accordance with: (1) NEPA, (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment is designed to consider the environmental effects, of adopting the proposed rule. Given the fact that a thorough analysis of the particular risks associated with moving garbage interstate to a specific destination in the continental United States is not possible without knowing the precise destination and handling protocol for such garbage, any specific proposed movements must be evaluated in detail under NEPA, and APHIS will not issue compliance agreements to parties to allow the movement of garbage as such until site-specific NEPA processes are complete. These analyses are necessary to ensure proper evaluation of localized risks and environmental hazards and compliance with NEPA.

Persons seeking to move municipal solid waste interstate from Hawaii using a method different from that evaluated in the risk assessment and

environmental assessment are advised that such movements may require the completion of another environmental assessment or other NEPA analysis.

Other Amendments to the Regulations

In conjunction with the proposed changes described above, we are also proposing to revise the regulations to clarify their applicability and to make them easier to understand. As stated earlier in this document, the regulations were designed to address the risk posed by garbage that originates on or is onboard conveyances that have been in areas where exotic animal and plant pests and diseases are present. This proposal would amend the regulations to clarify what provisions apply to garbage generated onboard conveyances, and what provisions apply to garbage generated prior to interstate movement of conveyances (*e.g.*, municipal solid waste from Hawaii). Provisions pertaining to garbage generated onboard a conveyance would be contained in 7 CFR 330.401 and 9 CFR 94.5(c), and provisions pertaining to garbage generated in Hawaii would be contained in 7 CFR 330.402 and 9 CFR 94.5(d).

We would also add provisions to the regulations that make it clear that imports of certain garbage (*e.g.*, municipal solid waste) from foreign countries other than Canada are prohibited due to their potential for introducing exotic plant and animal pests into the United States. The current regulations provide that certain imports of garbage are regulated in accordance with 7 CFR part 330 and 9 CFR part 94, but they do not specifically state that imports of garbage are prohibited unless they are imported in accordance with the provisions of those parts. We are proposing to clarify that the importation of garbage⁶ that the Administrator determines presents a risk of introducing animal or plant pests or diseases is prohibited.

Provisions pertaining to compliance agreements would be contained in revised 7 CFR 300.403 and 9 CFR 94.5(e). Those provisions currently provide, among other things, that where a compliance agreement is denied or cancelled, regulated garbage may continue to be unloaded from a means of conveyance and disposed of at an approved facility in accordance with § 330.401(g)(1) and § 94.5(f)(1). We are proposing to clarify that, in cases where compliance agreements have been denied or cancelled, the person who entered into or applied for the compliance agreement may be prohibited, at the discretion of the

⁵ These comments and the previous draft of the environmental assessment may be viewed on the Regulations.gov Web site. Go to <http://www.regulations.gov>, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS–2005–0047 then click on "Submit."

⁶ Except garbage generated onboard conveyances.

Administrator, from continuing to handle regulated garbage. This change is necessary to provide APHIS with suitable discretion to ensure that persons who do not abide by the conditions of compliance agreements may not be allowed to continue to move or handle regulated garbage.

We are also proposing to amend the regulations to provide that compliance agreements may be cancelled orally, and that oral cancellations and the reasons therefore would be confirmed in writing as promptly as circumstances allow. This provision is consistent with other APHIS requirements pertaining to compliance agreements, and provides

discretion necessary for APHIS to take immediate action to suspend compliance agreements of persons whose actions present a risk of introducing animal or plant pests or diseases into the United States. A table showing the proposed new locations of all current provisions follows.

Current provision 7 CFR	Current provision 9 CFR	Revised provision 7 CFR	Revised provision 9 CFR
330.400	94.5	330.400 through 330.403	94.5
330.400(a)	N/A	330.400(a)(1) & (a)(2)	94.5(a)(1) & (a)(2)
330.400(b)	94.5(a)	330.400(b) & 330.401(a) & (a)(1)	94.5(b) & (c)(1) & (c)(1)(i)
330.400(c)	94.5(b)	330.401(b)	94.5(c)(2)
330.400(c)(1)	94.5(b)(1)	330.401(b)(2)	94.5(c)(2)(ii)
330.400(c)(1)(i)	94.5(b)(1)(i)	330.401(b)(2)(i)	94.5(c)(2)(ii)(A)
330.400(c)(1)(i)(A)	94.5(b)(1)(i)(A)	330.401(b)(2)(i)(A)	94.5(c)(2)(ii)(A)(1)
330.400(c)(1)(i)(B)	94.5(b)(1)(i)(B)	330.401(b)(2)(i)(B)	94.5(c)(2)(ii)(A)(2)
330.400(c)(1)(ii)	94.5(b)(1)(ii)	330.401(b)(2)(ii)	94.5(c)(2)(ii)(B)
330.400(c)(2)	94.5(b)(2)	330.401(b)(1)	94.5(c)(2)(i)
330.400(c)(2)(i)	94.5(b)(2)(i)	330.401(b)(1)(i)	94.5(c)(2)(i)(A)
330.400(c)(2)(ii)	94.5(b)(2)(ii)	330.401(b)(1)(ii)	94.5(c)(2)(i)(B)
330.400(d)	94.5(c)	330.401(c)	94.5(c)(3)
330.400(d)(1)	94.5(c)(1)	330.401(c)(2)	94.5(c)(3)(ii)
330.400(d)(1)(i)	94.5(c)(1)(i)	330.401(c)(2)(i)	94.5(c)(3)(ii)(A)
330.400(d)(1)(ii)	94.5(c)(1)(ii)	330.401(c)(2)(ii)	94.5(c)(3)(ii)(B)
330.400(d)(2)	94.5(c)(2)	330.401(c)(1)	94.5(c)(3)(i)
330.400(d)(2)(i)	94.5(c)(2)(i)	330.401(c)(1)(i)	94.5(c)(3)(i)(A)
330.400(d)(2)(ii)	94.5(c)(2)(ii)	330.401(c)(1)(ii)	94.5(c)(3)(i)(B)
330.400(e)	94.5(d)	330.401(a)(2)	94.5(c)(1)(ii)
330.400(f)	94.5(e)	330.401(d)	94.5(c)(4)
330.400(f)(1)	94.5(e)(1)	330.401(d)(1)	94.5(c)(4)(i)
330.400(f)(2)	94.5(e)(2)	330.401(d)(2)	94.5(c)(4)(ii)
330.400(g)(1)	94.5(f)(1)	330.401(d)(3)	94.5(c)(4)(iii)
330.400(g)(2)	94.5(f)(2)	330.401(d)(3)(i) & (d)(3)(ii)	94.5(c)(4)(iii)(A) & (B)
330.400(h)	94.5(g)	330.401(e)	94.5(c)(3)(iv)
330.400(i)	94.5(h)	330.400(c)	94.5(b)
N/A	N/A	330.400(b) (def. for interstate)	94.5(b) (def. interstate)
330.400(i)(1)	94.5(h)(2)	330.400(b)	94.5(b)
330.400(i)(2)	94.5(h)(3)	330.400(b)	94.5(b)
330.400(i)(3)	94.5(h)(4)	330.400(b)	94.5(b)
330.400(i)(4)	94.5(h)(5)	330.400(b)	94.5(b)
330.400(i)(5)	94.5(h)(6)	330.400(b)	94.5(b)
N/A	94.5(h)(7)	N/A	N/A
N/A	94.5(h)(8)	N/A	N/A
N/A	94.5(h)(9)	330.400(b)	94.5(b)
N/A	94.5(h)(10)	330.400(b)	94.5(b)
330.400(j)	94.5(i)	330.403	94.5(e)
330.400(j)(1)	94.5(i)(1)	330.403(a)	94.5(e)(1)
330.400(j)(2)	94.5(i)(2)	330.403(b)	94.5(e)(2)
330.400(j)(2)(i)	94.5(i)(2)(i)	330.403(b)(1)	94.5(e)(2)(i)
330.400(j)(2)(ii)	94.5(i)(2)(ii)	330.403(b)(2)	94.5(e)(2)(ii)
330.400(j)(2)(iii)	94.5(i)(2)(iii)	330.403(b)(3)	94.5(e)(2)(iii)
330.400(j)(2)(iv)	94.5(i)(2)(iv)	330.403(b)(4)	94.5(e)(2)(iv)
330.400(j)(2)(v)	94.5(i)(2)(v)	330.403(b)(5)	94.5(e)(2)(v)
330.400(j)(3)	94.5(i)(3)	330.403(c)	94.5(e)(3)
330.400(j)(4)	94.5(i)(4)	330.403(d)	94.5(e)(4)
330.400(j)(5)	94.5(i)(5)	330.403(e)	94.5(e)(5)
N/A	N/A	330.402	94.5(d)
N/A	N/A	330.402(a)	94.5(d)(1)
N/A	N/A	330.402(b)	94.5(d)(2)
N/A	N/A	330.402(b)(1)	94.5(d)(2)(i)
N/A	N/A	330.402(b)(2)	94.5(d)(2)(ii)
N/A	N/A	330.402(b)(3)	94.5(d)(2)(iii)

We are also proposing to reorganize the order of requirements and to reconcile nonsubstantive inconsistencies between 7 CFR 330.400

and 9 CFR 94.5 to ensure their contents would be identical. The current provisions in 7 CFR 330.100 and 330.400 and 9 CFR 94.0 and 94.5 do not contain definitions for

the same terms, and in some cases, the meaning of terms used in those sections is ambiguous. We would therefore add, remove, and revise definitions for terms used in the regulations to provide for

greater clarity of the regulations. All definitions can be found in proposed 7 CFR 330.400(b) and 9 CFR 94.5(b) of the rule portion of this document. However, a new definition for *State* and a revised definition for *United States* would be located in 7 CFR 330.100 and 9 CFR 94.0.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to amend the regulations pertaining to garbage to provide for the interstate movement of certain garbage from Hawaii subject to measures designed to protect against the introduction and dissemination of plant pests into noninfested areas of the continental United States. We are proposing this action upon request in order to provide the State of Hawaii with additional waste disposal options, and after determining that the action would not result in the introduction of plant or animal pests or diseases into the continental United States from Hawaii.

If this proposal is adopted, the island of Oahu (where Honolulu is located) is expected to be the source of most, if not all, of any municipal solid waste (MSW) that is moved to the continental United States under the regulations. Oahu has only one municipal landfill (Waimanalo Gulch), and there is no alternative landfill on the island at the present time.

Oahu generates approximately 1.6 million tons of MSW per year. That figure is expected to rise an additional 20,000 tons and remain at that level for the next 10 years. Of the current total, 500,000 tons are recycled, 600,000 tons are burned for electricity, and 500,000 tons are landfilled. Of the 500,000 tons that are landfilled, 200,000 tons go to a privately operated construction and demolition landfill and 300,000 tons go to Waimanalo Gulch municipal landfill. Waimanalo Gulch landfill is owned by the City of Honolulu and managed by a private company.

The island of Hawaii (where Hilo is located) is another potential source of MSW that would move to the continental United States if the proposal is adopted. The island's only two landfills are located approximately 75 miles apart, and one (South Hilo Sanitary Landfill) may be nearing capacity. To date, one waste management service company has

proposed to bale and move (for a fee) at least some of the island's MSW to a landfill in Washington State.

Approximately 200 tons of garbage per day is landfilled at the South Hilo facility.⁷

The proposed rule would allow for the garbage to be compacted into bales, and then wrapped in plastic for transport to the mainland (the baling and wrapping would take place in the State of Hawaii). Estimates of the annual volume of MSW that would be shipped from Oahu to the continental United States range from 100,000 tons to 350,000 tons.⁸

Need for Rule and Alternatives Considered

The rule is being proposed upon request to provide public officials in Hawaii another option for disposal of the State's waste. The only other regulatory alternative would be to leave the regulations unchanged, but that alternative would unnecessarily limit Hawaiian officials' disposal options.

Small Entity Impact

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of proposed rules on small entities, i.e., small businesses, organizations, and governmental jurisdictions. The proposed changes would allow for the movement of MSW from Hawaii to the continental United States.

The proposed changes would not have a significant economic impact on a substantial number of small entities, because few entities, large or small, are likely to be affected. Only a handful of businesses are potentially affected by the rule—e.g., the company or companies that would secure the contract to move the waste from Hawaii, the barge line or lines that would physically move the waste to the mainland, the trucking company/railroad on the mainland that would physically move the waste to the interior landfill locations, and perhaps a few companies on Hawaii that would be forced to discontinue participation (or play a reduced role) in the State's waste disposal process once shipments to the mainland began. Those businesses that would participate in the movement of the waste to the mainland could be expected to benefit, since they would generate additional revenue and, presumably, profits from the increased business activity. Conversely, those

businesses that would either no longer participate or would play a reduced role in Hawaii's waste disposal process could be expected to suffer lost revenue.

The revenues generated by the private company that manages the Waimanalo Gulch landfill, for example, are presumably tied to the volume of waste that is landfilled there. If waste is diverted from Waimanalo Gulch to the mainland, that company's revenues are likely to be reduced. The City of Honolulu and the County of Hawaii are also potentially affected by the proposed changes.

The preceding discussion assumes that the rule would not have significant environmentally related economic consequences for small entities. There are several reasons. First, the environmental assessment in this document concludes that the movement of MSW from Hawaii to the continental United States (using the plastic-baled methodology) will not have a significant impact on the environment. Second, site-specific environmental assessments will also be prepared as requests for compliance agreements are made. The site-specific assessments, which will be made available for public comment, will allow APHIS to address any environmental issues that may arise based on precise destination and handling protocols for the proposed movements, which are now unknown.

Although the size of virtually all of the businesses potentially affected by the rule is unknown, it is reasonable to assume that at least some could be small. This assumption is based on composite data for providers of the same and similar services in the United States. As an example, North American Industry Classification System (NAICS) category 562 ("Waste Management and Remediation Services") consists of establishments engaged in the collection, treatment, and disposal of waste materials. Under the U.S. Small Business Administration's (SBA) size standards, the small entity threshold for establishments that fall into most of the activity subcategories under NAICS 562 is annual receipts of \$10.5 million. For all 18,405 U.S. establishments in NAICS 562 in 2002, average per-establishment receipts that year were \$2.8 million, an indication that most waste management service companies are small entities.⁹ Annual receipt data for three of the four firms that have proposed to move Hawaii's waste to the mainland are not available. Although annual receipt data for the fourth company are also not available, that company is considered

⁷ Source: News accounts in the *Honolulu Star-Bulletin*.

⁸ Source: News accounts in the *Honolulu Star-Bulletin* and APHIS staff. Similar estimates for the island of Hawaii are not available.

⁹ Source: U.S. Census Bureau (2002 Economic Census) and SBA.

large by virtue of it being a subsidiary of a publicly owned firm with receipts (operating revenues) of over \$13 billion in 1999.¹⁰ The private company that currently manages the Waimanalo Gulch landfill is also a subsidiary of that publicly owned firm.

As another example, there were 677 U.S. entities in NAICS category 483113 in 2002. NAICS 483113 consists of entities primarily engaged in providing deep sea transportation of cargo to and from domestic ports. For all 677 entities, average per-entity employment that year was 36, well below the SBA's small entity threshold of 500 employees for entities in that NAICS category.¹¹

Under the RFA, the term "small governmental jurisdiction" generally means cities, counties, townships, etc., with a population of less than 50,000. The City of Honolulu, which owns the Waimanalo Gulch landfill, does not qualify as a small entity because its population exceeds 50,000. The County of Hawaii, where Hilo is located, also has a population that exceeds 50,000.

The proposed changes would not, as noted previously, have a significant economic impact on a substantial number of small entities, because few entities, large or small, are likely to be affected. The size of virtually all of the businesses potentially affected by the proposed changes is unknown, but it is reasonable to assume that at least some could be small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 13175

Adoption of this proposed rule as a final rule, and activities that could occur if compliance agreements are issued under such a final rule, may have tribal implications as defined by Executive Order 13175. We have entered into consultations with Indian tribes that may be affected by the specific proposals presented to us. Those consultations are ongoing and will be concluded prior to entering into compliance agreements for municipal solid waste moving from Hawaii.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 05-002-2. Please send a copy of your comments to: (1) Docket No. 05-002-2, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Under the regulations in 7 CFR 330.400 and 9 CFR 94.5, APHIS regulates the importation and interstate movement of garbage that may pose a risk of introducing or disseminating animal or plant pests or diseases that are new to or not widely distributed within the United States. Not all movements of waste material are regulated by APHIS; only movements of waste that meets the definition of "garbage" are regulated, and even then, only under certain circumstances.

APHIS is proposing to amend the regulations to provide for the interstate movement of garbage from Hawaii subject to measures designed to protect against the introduction and dissemination of plant pests into noninfested areas of the continental United States. APHIS is proposing this action upon request in order to provide the State of Hawaii with additional waste disposal options, and after determining that the action would not result in the introduction of plant or animal pests or diseases into the

continental United States from Hawaii. Under the proposed regulations, all municipal solid waste moved interstate from Hawaii to any area of the continental United States would have to be moved under a compliance agreement between the person handling or disposing of garbage and APHIS, and thus would require the completion of a PPQ Form 519, "Compliance Agreement."

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

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

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

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

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

Estimate of burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Companies that handle or dispose of garbage.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 20 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option

¹⁰ Source: Various Internet sites.

¹¹ Source: U.S. Census Bureau (2220 Economic Census) and SBA.

of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 7 CFR part 330 and 9 CFR part 94 as follows:

TITLE 7—[AMENDED]

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

1. The authority citation for part 330 would continue to read as follows:

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; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

2. In § 330.100, a definition for *State* would be added and the definition for *United States* would be revised to read as follows:

§ 330.100 Definitions.

* * * * *

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.

United States. All of the States.

3. Subpart-Garbage would be revised to read as follows:

Subpart—Garbage

Sec.

330.400 Regulation of certain garbage.

330.401 Garbage generated onboard a conveyance.

330.402 Garbage generated in Hawaii.

330.403 Compliance agreement and cancellation.

§ 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. Byproducts 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 certificate from an inspector, saying 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 of agricultural wastes and yard waste from Hawaii to the continental United States 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 number 0579-0054).

TITLE 9—[AMENDED]

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

4. The authority citation for part 94 would continue to read as follows:

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 371.4.

5. In § 94.0, a definition for *State* would be added and the definition for *United States* would be revised to read as follows:

§ 94.0 Definitions.

* * * * *

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.

* * * * *

United States. All of the States.

* * * * *

6. Section 94.5 would be revised to read as follows:

§ 94.5 Regulation of certain garbage.

(a) *General restrictions.* (1) *Interstate movements of garbage from Hawaii and U.S. territories and possessions to the continental United 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 section 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, the importation of garbage from all foreign countries except Canada is prohibited except as provided in § 330.401(b).

(b) *Definitions. Agricultural waste.* Byproducts 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.

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

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.

Inspector. A properly identified employee of the U.S. Department of Agriculture or other person authorized by the Department to enforce the provisions of applicable statutes, quarantines, and regulations.

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

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

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 under nonrefrigerated conditions (over 50 °F or 10 °C).

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.

(c) *Garbage generated onboard a conveyance.* (1) *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.

(i) 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 (c)(2) and (c)(3) of this section.

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

(2) *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:

(i) *Exception 1: Aircraft.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (c)(4) of this section if the following conditions are met when the garbage is on or removed from the aircraft:

(A) 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 § 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 (c)(4)(ii) and (c)(4)(iii) of this section.

(B) After the garbage and stores referred to in paragraph (c)(2)(i)(A) of this section were removed, the aircraft has not been in a non-Canadian foreign port.

(ii) *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 (c)(4) of this section if the following conditions are met when the garbage is on or removed from the means of conveyance:

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

(1) 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 § 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 (c)(4)(ii) and (c)(4)(iii) of this section.

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

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

(3) *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:

(i) *Exception 1: Aircraft.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (c)(4) of this section if the following two conditions are met when the garbage is on or removed from the aircraft:

(A) 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 (c)(4)(ii) and (c)(4)(iii) of this section.

(B) After the garbage and stores referred to in paragraph (c)(3)(i)(A) 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.

(ii) *Exception 2: Other conveyances.* Garbage on or removed from a means of conveyance other than an aircraft is exempt from requirements under paragraph (c)(4) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(A) The means of conveyance is accompanied by certificate from an inspector, saying 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 (c)(4)(ii) and (c)(4)(iii) of this section.

(B) After being cleared of the garbage and stores referred to in paragraph (c)(3)(ii)(A) 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.

(4) *Restrictions on regulated garbage.*

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

(ii) 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.

(iii) 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.

(A) 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.

(B) 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 therefore and an opportunity to show cause why the approval should be reinstated.

(iv) 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.

(d) *Garbage generated in Hawaii.* (1) *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.

(i) 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.

(ii) The interstate movement of agricultural wastes and yard waste from Hawaii to the continental United States is prohibited.

(iii) Garbage generated onboard any means of conveyance during interstate movement from Hawaii is regulated under paragraph (c) of this section.

(2) *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.

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

(ii) The garbage must be moved under a compliance agreement in accordance with paragraph (e) of this section. 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.

(iii) 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.

(e) *Compliance agreement and cancellation.* (1) Any person engaged in the business of handling or disposing of garbage in accordance with this section 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.

(2) 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 introduction and dissemination into or within the United States of plant pests and livestock or poultry diseases:

(i) Comply with all applicable provisions of this section;

(ii) 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;

(iii)(A) If the garbage is regulated under paragraph (c) of this section, remove garbage from a means of conveyance only in tight, covered, leak-proof receptacles;

(B) If the garbage is regulated under paragraph (d) of this section, transport garbage interstate in sealed, leak-proof packaging approved by the Administrator;

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

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

(3) 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 section. 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.

(4) 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 section. 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.

(5) 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 number 0579-0054).

Done in Washington, DC, this 13th day of April 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 381, and 442

[Docket No. 04-041C; FDMS Docket Number FSIS-2005-0032]

RIN 0583-AD17

Determining Net Weight Compliance for Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble and regulatory text to a proposed rule published in the **Federal Register** of March 28, 2006, concerning net weight compliance for meat and poultry products. These corrections reference the revised version of the National Institute of Standards and Technology (NIST) Handbook 133, dated January 2005. The March 28, 2006, proposed rule incorrectly referenced the NIST Handbook 133, dated January 2002. The standards in the January 2005 NIST Handbook 133 that are being proposed to be incorporated by reference in FSIS' meat and poultry inspection regulations remain substantively unchanged from those currently incorporated by reference in FSIS' regulations and are no different than the standards in the January 2002 version.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, PhD, Director, Labeling and Consumer Protection Staff, Office of Policy, Program, and Employee Development, FSIS, by telephone at (202) 205-0279 or by fax at (202) 205-3625.

Correction

In the proposed rule, entitled, "Determining Net Weight Compliance for Meat and Poultry Products," (FSIS Docket No. 04-041P; FDMS Docket Number FSIS-2005-0032), beginning on page 15340 in the March 28, 2006, **Federal Register** make the following corrections. In the **SUPPLEMENTARY**