

§ 301.98-5

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stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.

(c) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a Departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of the West Indian fruit fly; and

(4) With a tag or label bearing the number of the Departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579-0170)

§ 301.98-5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector⁴ for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with §301.98-10 of this subpart; or

(ii) Based on inspection of the premises of origin, the premises are free from the West Indian fruit fly; or

(iii) Based on inspection of the regulated article, the regulated article is free of West Indian fruit flies; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering ade-

⁴Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236, or the APHIS web site at <http://www.aphis.usda.gov/travel/aqui.html>.

quate to prevent access by the West Indian fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714)⁵ to prevent the spread of the West Indian fruit fly; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector⁶ will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the West Indian fruit fly because life stages of the West Indian fruit fly will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714) to prevent the spread of the West Indian fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

⁵Section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

⁶See footnote 4 to §301.98-5(a).

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. 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.

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§ 301.98-6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions,

and agrees to comply with all the provisions contained in the compliance agreement.⁷

(b) 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.

§ 301.98-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.98-5(c)) who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector⁸ as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

⁷Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

⁸See footnote 4 to § 301.98-5(a).