

determines that the appointee's continued presence in the work place during the notice period may pose a threat to the appointee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

(i) Assigning the appointee to duties where he or she is no longer a threat to safety, the agency mission, or Government property;

(ii) Allowing the appointee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the appointee has absented himself or herself from the worksite without requesting leave;

(iii) Curtailing the notice period when the agency can invoke the provisions of paragraph (d) of this section; or

(iv) Placing the employee in a paid, nonduty status for such time as is necessary to effect the action.

(c) *Appointee's answer.* (1) The appointee may answer orally and in writing except as provided in § 752.604(c)(2) of this part. The agency must give the appointee a reasonable amount of official time to review the material relied on to support its proposed action, to prepare an answer orally and in writing, and to secure affidavits, if the appointee is in an active duty status. The agency may require the appointee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days.

(2) The agency will designate an official to hear the appointee's oral answer who has authority either to make or to recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides for such hearing in its regulations. Under 5 U.S.C. 7543(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral answer.

(3) If the appointee wishes the agency to consider any medical condition that may have affected the basis for the adverse action, the appointee must be given reasonable time to furnish medical documentation (as defined in § 339.104 of this chapter) of the condition. Whenever possible, the appointee will supply such documentation within the time limits allowed for an answer.

(d) *Exception.* Section 7543(b)(1) of title 5, U.S. Code, authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension, including indefinite suspension. This notice exception is commonly referred to as the "crime provision." This provision may be invoked even in the absence of judicial action.

(e) *Representation.* Section 7543(b)(3) of title 5, U.S. Code, provides that an appointee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an appointee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) *Agency review of medical information.* When medical information is supplied by the appointee pursuant to paragraph (c)(3) of this section, the agency may, if authorized, require a medical examination under the criteria of § 339.301, or otherwise, at its option, offer a medical examination in accordance with the criteria of § 339.302. If the appointee has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency must provide information concerning disability retirement. The agency must be aware of the affirmative obligations of the provisions of 29 CFR 1614.203, which require reasonable accommodation of a qualified individual with a disability.

(g) *Agency decision.* (1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the appointee or the appointee's representative, or both, made to a designated official and any medical documentation reviewed under paragraph (f) of this section.

(2) The notice must specify in writing the reasons for the decision and advise the appointee of any appeal or grievance rights under § 752.605 of this part. The agency must deliver the notice of decision to the appointee on or before the effective date of the action.

(h) *Applications for disability retirement.* Section 831.1204(e) of this chapter provides that an appointee's application for disability retirement need not delay any other appropriate

personnel action. Section 831.1205 and section 844.202 of this chapter set forth the basis under which an agency must file an application for disability retirement on behalf of an appointee.

§ 752.605 Appeal rights.

(a) Under 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) A limited term or limited emergency appointee who is covered under § 752.601(c)(2) also may appeal an action taken under this subpart to the Merit Systems Protection Board.

§ 752.606 Agency records.

The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the employee upon his or her request, the following documents:

- (1) Notice of the proposed action;
- (2) Employee's written reply, if any;
- (3) Summary of the employee's oral reply, if any;
- (4) Agency notice of decision; and
- (5) Any order effecting the action, together with any supporting material.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2006-0153]

RIN 0579 AC25

South American Cactus Moth; Availability of an Environmental Assessment and Reopening of Comment Period

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments; reopening of comment period.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the establishment of domestic quarantine regulations for the South American cactus moth, *Cactoblastis cactorum*. The environmental assessment documents our review and analysis of environmental impacts associated with the proposed rulemaking. We are making this environmental assessment available to the public for review and

comment. In addition, we have determined that the South American cactus moth is present in the State of Mississippi, which we did not include in the quarantined area in our proposal to establish regulations for South American cactus moth. We are reopening the comment period on that proposal to allow interested persons to submit comments on the addition of Mississippi to the proposed quarantined area, as well as on other aspects of the proposal.

DATES: We will consider all comments that we receive on or before October 20, 2008.

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

- *Federal eRulemaking Portal:* Go to http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&id=APHIS_2006_0153 to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS 2006 0153, 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. APHIS 2006 0153.

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: Dr. Robyn Rose, National Program Lead, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Rd., Unit 26, Riverdale, MD 20737-1236; (301) 734-7121.

SUPPLEMENTARY INFORMATION:

Background

The South American cactus moth (*Cactoblastis cactorum*) is a grayish-brown moth with a wingspan of 22 to 35 millimeters (approximately 0.86 to 1.4 inches) that is indigenous to Argentina, southern Brazil, Paraguay, and Uruguay. It is a serious quarantine pest of *Opuntia* spp., and an occasional pest of *Nopalea* spp., *Cylindropuntia*

spp., and *Consolea* spp., four closely related genera of the family Cactaceae. After an incubation period following mating, the female South American cactus moth deposits an egg stick resembling a cactus spine on the host plant. The egg stick, which consists of 70 to 90 eggs, hatches in 25 to 30 days and the larvae bore into the cactus pad to feed, eventually hollowing it out and killing the plant. Within a short period of time, the South American cactus moth can destroy whole stands of cactus.

On February 11, 2008, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (73 FR 7679-7686, Docket No. APHIS-2006-0153) a proposal to amend the domestic quarantine regulations to establish regulations to restrict the interstate movement of South American cactus moth host material, including nursery stock and plant parts for consumption, from infested areas of the United States.

In connection with this proposed rule, we have prepared an environmental assessment (EA) entitled "Quarantine for the South American Cactus Moth, *Cactoblastis cactorum*, in Florida, South Carolina, Georgia, Alabama, and Mississippi." We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

Since publication of the proposed rule, surveys conducted by the Mississippi Department of Agriculture and Commerce have confirmed the presence of South American cactus moth in the State of Mississippi. Therefore, we have determined that Mississippi should be added to the proposed list of quarantined areas in § 301.55-3(c). In addition, we would like to clarify our intention regarding the use of deltamethrin as a treatment. Although the "Background" section of the proposal listed deltamethrin as an acceptable treatment for South American cactus moth, the proposed regulatory text did not include deltamethrin. We do not have efficacy data for the use of this chemical on South American cactus moth; therefore we did not intend to approve deltamethrin as a treatment and it should not have been included as an acceptable treatment in the "Background" section.

Comments on the proposed rule were required to be received on or before April 11, 2008. We are reopening the comment period for the proposed rule for 30 days following publication of this

notice. This action will allow interested persons to prepare and submit comments regarding the proposed addition of Mississippi to the list of States quarantined for South American cactus moth or other aspects of the proposed rule. We will also consider all comments received between April 11, 2008, and the date of this notice.

The environmental assessment, the proposed rule, and all previously received comments on the proposed rule may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the documents listed above by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (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).

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3. Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A 293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 12th day of September 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 94 and 95

[Docket No. APHIS-2008-0093]

Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Meat, Meat Byproducts, and Meat Food Products Derived From Bovines 30 Months of Age or Older

AGENCY: Animal and Plant Health Inspection Service, USDA.