Rules and Regulations

Federal Register
Vol. 69, No. 203
Thursday, October 21, 2004

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 322

[Docket No. 98–109–2]

RIN 0579–AB20

Bees and Related Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for the importation of honeybees and honeybee semen and the regulations governing the importation of bees other than honeybees, certain beekeeping byproducts, and used beekeeping equipment. Among other things, we are allowing honeybees from Australia and honeybees and honeybee germ plasm from New Zealand to be imported into the continental United States under certain conditions, imposing certain conditions on the importation into the United States of bees and related articles from Canada, and prohibiting both the interstate movement and importation of honeybees into Hawaii. This action also consolidates all of our regulations concerning all bees in the superfamily *Apoidea.* These changes are intended to make these regulations more consistent with international standards, update them to reflect current research and terminology, and simplify them and make them more useful.

DATES: November 22, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Wayne F. Wehling, Entomologist, Pest Permit Evaluations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8757.

SUPPLEMENTARY INFORMATION:

Background

Under the Honeybee Act (7 U.S.C. 281–286), the Secretary of Agriculture is authorized to prohibit or restrict the importation of honeybees and honeybee semen to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species such as the African honeybee. The Secretary has delegated responsibility for administering the Honeybee Act to the Administrator of the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA). Regulations established under the Honeybee Act are contained in the Code of Federal Regulations (CFR), Title 7, part 322 (referred to below as the ''honeybee regulations'').

Regulations Covering Bees and Honeybees

The honeybee regulations have allowed the unrestricted importation into the United States of honeybees and honeybee semen from Canada, but placed stringent requirements on the importation of these products from other countries. Honeybee imports from any country other than Canada have been allowed only if the bees are imported by the USDA for experimental or scientific purposes. Honeybee semen could be imported by the USDA for experimental or scientific purposes or by another person or group only if the semen was imported from Australia, Bermuda, France, Great Britain, or Sweden and met certain documentation, packaging, inspection, notification, and port of entry requirements. Honeybees and honeybee semen from New Zealand have been allowed to transit the United States en route to another destination in accordance with certain documentation, packaging, handling, notification, and port of entry requirements, but entry has not been allowed.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of plant pests and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Secretary has delegated responsibility for administering the Plant Protection Act to the Administrator of APHIS. Regulations authorized by the Plant Protection Act concerning the importation of certain bees, beekeeping byproducts, and used beekeeping equipment are contained in 7 CFR part 319, §§ 319.76 through 319.76–8 (referred to below as the ''pollinator regulations'').

The pollinator regulations have governed the importation of live bees other than honeybees, dead bees of the superfamily *Apoidea*, certain beekeeping byproducts, and beekeeping equipment. These regulations have been intended to prevent the introduction of exotic bee diseases and parasites that, if introduced into the United States, could cause substantial reductions in pollination by bees. Reductions in pollination by bees could indirectly cause serious damage to crops and other plants.

The pollinator regulations have allowed bees other than honeybees; dead bees; used bee boards, hives, nests, and nesting material; used beekeeping equipment; beeswax; pollen for bee feed; and honey for bee feed to be imported into the United States from Canada without restriction, but have restricted the importation of these articles from other countries. Specifically, the pollinator regulations have provided for the importation of these articles from any country other than Canada only if they are imported by USDA for experimental or scientific purposes or if they are imported under permit and meet certain documentation, inspection, treatment, packaging, notification, and port of entry requirements.

Proposed Rule and Responses to Comments

On August 19, 2002, we published in the **Federal Register** (67 FR 53844–53867, Docket No. 98–109–1) a proposal to amend the regulations by revising the honeybee regulations and the pollinator regulations. Among other things, we proposed to allow honeybees from Australia and honeybees and honeybee germ plasm from New Zealand to be imported into the United States under certain conditions, to impose certain conditions on the importation into the United States of bees and related articles from Canada, and to prohibit the interstate movement of honeybees into Hawaii. We also proposed to consolidate the honeybee regulations and the pollinator regulations by

combining both into part 322. These changes were intended to make these regulations more consistent with international standards, update them to reflect current research and terminology, and simplify them and make them more useful.

We solicited comments concerning our proposal for 90 days ending November 18, 2002. We received 308 written comments by that date, most of which expressed opposition to our proposal. They were from beekeepers, beekeepers' associations, researchers, and representatives of State and foreign governments. These comments, as well as oral comments presented at three public hearings on the proposed rule, are discussed below by topic.

The largest group of commenters who opposed the proposed rule expressed the concern that by allowing imports of honeybees from Australia and New Zealand, APHIS risked letting in disease organisms, mites and other bee parasites, hitchhiker insects, and Africanized bees. Issues raised by these commenters included the adequacy of the surveillance programs of Australia and New Zealand, the adequacy of our proposed inspection requirements, the danger of introducing exotic pests into Hawaii, the adequacy of our proposed provisions related to packaging, and the possible precedent that the proposed changes could set for future regulation of honeybee imports.

Some commenters questioned the efficacy of the surveillance programs of Australia and New Zealand, fearing that authorities in those countries might fail to detect common pests or diseases in bees slated for export to the United States. Various commenters discussed the recent outbreak in Australia of small hive beetle, the routing by Australian companies of illegal honey to the United States, and the belated discovery of Varroa mite in New Zealand after New Zealand's Ministry of Agriculture and Forestry (MAF) had conducted a nationwide survey and pronounced New Zealand free of dangerous pests and diseases and after bees certified by the MAF as Varroa-free were shipped from that country to Canada. These episodes were cited as examples of regulatory lapses on the part of Australia and New Zealand. Commenters also expressed reservations about the ability or the willingness of the governments of Australia and New Zealand to implement the inspection regimen spelled out under § 322.6 of the proposed rule. One commenter asserted that the two countries have expressed an unwillingness to pay for or subsidize honeybee inspection programs.

APHIS has worked extensively with the Australian Quarantine and Inspection Service (AQIS) and with MAF both in the preparation of the country-specific pest risk assessments (PRAs) and these revised regulations. The PRAs did not reveal any bee pathogens, parasites, or disease strains in either Australia or New Zealand that are not already present in the continental United States. The Varroa mite found in New Zealand and the European foulbrood found in Australia were both determined to be identical to the strains already present in the continental United States. Moreover, the introduction of exotic bee species or subspecies is extremely unlikely given the importation restrictions and inspection regimes already in place in Australia and New Zealand. Both countries have strong beekeeping organizations with good government support. We are confident, therefore, that the provisions we have developed will prevent the introduction of new exotic bee diseases into the continental United States. If new maladies or problems are detected, appropriate measures will be taken. For reasons that will be discussed in greater detail further on in this document, this final rule, unlike the proposed rule, will not allow bees to be imported into Hawaii from Australia or New Zealand.

A number of commenters raised issues pertaining to the inspection requirements for imported honeybees, specified in § 322.6 of the proposed rule. Proposed § 322.6 required individual inspection of the hives from which the honeybees in each shipment were derived by an official of the appropriate regulatory agency of the exporting region no more than 10 days prior to export. Inspections were also required of individual hives from which germ plasm was derived. Inspectors were further required to identify any diseases, parasites, or undesirable species or subspecies of honeybee found in the hive during inspection and to certify that the bees in the shipment were produced in the exporting region and were the offspring of queens and drones or semen also produced in the exporting region. Additional inspection conditions specific to Hawaii in proposed § 322.6 included a requirement for certification that the pre-export inspections revealed no sign of Varroa mite, tracheal mite, or African honeybee on the day of export.

Citing various reasons, commenters argued that our proposed inspection requirements were inadequate, unworkable, or otherwise not feasible. Some commenters expressed the view that time, personnel, and methodological constraints would prevent the inspection procedures from being conducted with the rigor necessary to prevent the accidental introduction of unwanted organisms into the United States. A commenter argued that within the prescribed 10-day period preceding export, the exporting country's authorities would only have time to do visual inspections of the bees, and the necessary laboratory procedures would not be performed. Other commenters expressed skepticism that there would be sufficient numbers of inspectors available during a shipping season to conduct even visual inspections of individual hives within 10 days prior to shipment. A minimal inspection of bees for known diseases and parasites, suggested another commenter, requires a combination of field and laboratory examinations. Certain parasites and diseases (*e.g.*, Varroa mites and foulbrood diseases) can be diagnosed in the field by trained personnel, but the absolute identification of the bacteria responsible for American foulbrood disease and European foulbrood disease would require laboratory analyses. Other parasites and pathogens (*e.g.*, Acarapis mites and the parasitic protozoan that causes Nosema disease) are not visible to the naked eye, and their identification would require dissection of adult honeybees followed by microscopic examination. Inspection for parasites and diseases of honeybees not currently found in Hawaii or the continental United States, such as *Tropilaelaps* and Euvarroa mites and Thai sacbrood virus, as required by the APHIS proposal, would require additional field and laboratory diagnoses, including molecular characterization of viruses. The detection of some exotic parasites and diseases, it was suggested, will depend upon the development and verification of new field and laboratory methodologies. Similarly, the requirement that the export certificate identify the species or subspecies of honeybee found in the hive during the pre-export inspection to ensure that no undesirable species or subspecies of bees (*e.g., Apis mellifera capensis*) gain entrance into the United States could only be met by developing new laboratory molecular genetic and/or morphometric techniques for subspecies identification. Finally, another commenter asserted that the required certification in § 322.6 that the bees or queens in a shipment originated in the exporting region is not objectively verifiable.

Some commenters discussed what they saw as the need for the final rule to specify a standard detection and inspection protocol for all dangerous honeybee pests and pathogens and ensure that such specified protocols provide accurate detection and identification of each and every dangerous honeybee pathogen or pest. One commenter argued that if new inspection standards are to be adopted for imported honeybees, they should be based upon the inspection protocols of the Office International des Epizooties (OIE). The OIE protocols, according to this commenter, specify specific numbers of bees that are to be examined. The commenter asserted that, under the proposed rule, the OIE guidelines were mandated only for importation certificates for Hawaii.

Other commenters argued that the final rule should provide for port-of-entry inspections and testing of imported bees. One of these commenters also argued for quarantining bees entering the United States.

APHIS is revising the bee regulations, in part, to bring them into alignment with the international standards as set forth by the OIE guidelines for export certification (Article 3.4.2.3). The inspection requirements in the proposed rule were derived from the internationally accepted OIE standard, with some modifications tailored to address the honeybee pest concerns of the United States, Australia, and New Zealand. The requirement for inspection of hives no more than 10 days prior to export is derived directly from the stipulations set forth in the guidelines of the OIE in Appendix 3.4.2, ''Hygiene and Disease Security Procedures in Apiaries.'' Therefore, the inspection standards contained in the proposed rule and in this final rule are no less rigorous than any international standards. In addition, all inspection-related documentation will be examined by APHIS at the port of entry. We are confident, therefore, not only that the requirements for pre-export inspection are adequate to safeguard against the introduction of new honeybee pests, but also that we will be able to enforce these requirements. The comments concerning the requirements specific to Hawaii in § 322.6(a)(2) of the proposed rule are no longer relevant, since we will not be allowing imports of honeybees into Hawaii.

Regarding port-of-entry inspections, the proposed rule, under § 322.12, did allow for port inspections of documentation, including export certificates and notice of arrival, and packaging of shipments of honeybees, honeybee germ plasm, and other bees. The proposal also authorized inspectors to refuse entry of shipments that failed to meet the requirements of part 322.

The Government of Australia, in its comments, took a different view of the inspection requirements in our proposed § 322.6 than did most of the commenters, arguing that the requirement for individual inspection of hives no more than 10 days prior to export is unwarranted as applied to Australia. This requirement, it was said, does not constitute a risk-management measure relating to any specific disease or pest that could be of quarantine significance to the United States and is not consistent with conditions in the continental United States, as there exists no equivalent inspection requirement for hives for internal movement of bees within the continental United States. Another commenter, not affiliated with the Government of Australia, argued for loosening, rather than eliminating, the 10-day requirement, suggesting that 30 days prior to export would be a more practical timeframe for inspections.

As noted earlier, the requirement that all colonies yielding export material be inspected no more than 10 days prior to export comes directly from the OIE export standards. Loosening this 10-day requirement would result in a corresponding loss of confidence that the export certificate would have identified all of the diseases and pests present at the time of packaging. We do not regulate the interstate movement of honeybees in the continental United States, which we view as a single region for the purposes of sanitary surveillance of apiaries.

The Government of Canada argued against the inspection provisions on similar grounds. The regulations in § 322.1(b) have stated that honeybees or honeybee semen from Canada may be imported into the United States without any further restrictions under the honeybee regulations. The August 2002 proposed rule placed Canada on an equal footing with Australia and New Zealand, subjecting imports from all three countries to the same certification, inspection, and other requirements. The Canadian representative cited the lack of equivalent requirements for bees shipped within the United States in arguing that our proposed inspection requirements exceeded the provisions of international trade agreements. By enacting the proposed requirements, it was claimed, APHIS would be placing new import conditions upon Canada without having first conducted a PRA to justify such an action. Similarly, our proposed requirements for inspection and the associated certification for imported Canadian honeybee germ plasm were criticized as unwarranted and contrary to the provisions of international trade agreements. Our proposed inspection and certification requirements for bumblebees and leafcutter bees from Canada were said to be unjustified unless APHIS knew of disease agents that affect bumblebees and leafcutter bees in Canada but not in the United States.

Our decision to regulate the contiguous United States as a single sanitary surveillance unit has no bearing on import requirements as they will be applied to Canada. The requirements for Canada directly reflect the international standard as agreed upon through the OIE. APHIS' decision to require certification of honeybees, honeybee germ plasm, and bumblebees from Canada is based on our concerns over the range of countries that Canada imports these commodities from, as well as concerns over smuggling.

Packaging standards were also discussed by commenters as a risk-related issue. General packaging requirements for shipments of honeybees and other bees were contained in § 322.8 of the proposed rule. Proposed § 322.9 pertained to mailed packages of honeybees, honeybee germ plasm, or other bees, and proposed §§ 322.10 and 322.11, to hand-carried packages containing those commodities. Similarly, proposed §§ 322.18 and 322.19 contained, respectively, general requirements for packaging of restricted organisms and specific requirements for mailed packages, and §§ 322.20 and 322.21 set out conditions for hand-carried packages. Proposed § 322.35 contained requirements for mailed packages of restricted articles, and hand-carrying requirements were set out in proposed §§ 322.36 and 322.37. Certain materials, such as brood, comb, pollen, or honey, were specifically prohibited in proposed § 322.8, but shippers were allowed some latitude in packing methods, as long as the overarching objective, stated in § 322.8(a)(1), that shipments must be packaged to prevent the escape of any bees, was met. Proposed § 322.18 did specify acceptable packaging materials for shipments of restricted organisms. Commenters suggested that more detailed requirements for packaging of honeybee shipments were needed in order to prevent the escape of imported bees that may carry diseases or pests. Some commenters also argued that allowing individuals to carry live bees in their personal baggage could present undue risks of spreading disease, as not all individuals could be counted on to package their shipments with adequate care.

We chose, in this instance, to employ a performance standard rather than a list of detailed packaging requirements in order not to place an excessive regulatory burden on shippers. In response to these comments, we are amending § 322.8(a)(1) to state that imported adult honeybees must be packaged to prevent the escape of any bees or bee pests. Packages of bees will be inspected at the port of entry for integrity and security of the packaging. Packaging deemed inadequate can be refused entry by the inspector. Similarly, inadequate packaging would in all likelihood cause the shipper to refuse receipt of the packaged bees at the origin of the shipment. We have also reconsidered our proposed provisions regarding hand carrying, in response to a recent Audit Report of APHIS Permits by the Office of the Inspector General (OIG) of the USDA. This audit has brought about many recent changes to our plant pest permit review and issuance processes, practices, and policies, some of which will be discussed later in this document. In accordance with the recommendations of the audit, we will not be allowing individuals to hand carry live bees, restricted organisms, or restricted articles into the United States. Therefore, this final rule will not include proposed §§ 322.10, 322.11, 322.20, and 322.36. Proposed §§ 322.21 and 322.37 have been amended in this final rule to provide only for importation via commercial vehicles arriving at land border ports in the United States. Other sections of this final rule have been renumbered accordingly.

A number of commenters discussed what they saw as the potential risks specific to Hawaii of allowing the importation of honeybees into the State from Australia and New Zealand. One commenter, noting that Hawaii, because of its isolation, has a fragile ecosystem, suggested that the introduction into Hawaii of *Apis mellifera* from anywhere else on earth could include the introduction of microbiological pathogens that could spill over and adversely affect the 22 species of native bees or hundreds of other hymenopteran or dipteran species that are present in the State. Loss of insects could result in impaired pollination. Other commenters noted that Hawaii is free of parasitic mites, such as the Varroa mite, known to exist in New Zealand. It was suggested that such pests could be introduced to Hawaii by allowing imports of honeybees from New Zealand. Some commenters argued that since APHIS prohibits interstate movement of honeybees to Hawaii to prevent the introduction of exotic pests there, APHIS should also prohibit international movement of bees to Hawaii for the same reason. Commenters argued that the introduction of a pest like Varroa mite would devastate the Hawaiian bee industry. One commenter asserted that such an outbreak could cause Hawaii to lose half of its managed hives and all of its feral honeybee population. It was also suggested that if Hawaii were to be invaded by the Varroa mite, the use of miticides would mean the end of American organic honey, as Hawaii is the only State that produces it. Other commenters cited the possible introduction of the aggressive Africanized honeybee to Hawaii via imports from Australia and New Zealand as a cause for concern. It was suggested that Africanized honeybees could have a disastrous impact on Hawaii's tourist industry.

After we initiated the process of revising the bee regulations, Varroa mite was found in New Zealand, and the small hive beetle (*Aethina tumida*) was found in Australia. Neither bee pest is present in Hawaii; therefore, this final rule prohibits the importation of adult honeybees into Hawaii. Specifically, § 322.4(a) of this final rule lists Australia, Canada, and New Zealand as regions that are approved for the importation of adult honeybees into the continental United States (i.e., not including Hawaii), and proposed § 322.6(a)(2), which contained conditions for export certificates accompanying shipments of adult honeybees into Hawaii, has been removed.

As a result of our decision not to allow honeybees or other bees to be imported into Hawaii, any bees from Australia or New Zealand that are transiting through Hawaii will be considered restricted organisms and will be subject to the appropriate requirements. The conditions for transiting imported bees through and transloading them in Hawaii, set forth in the proposed rule in Subpart D—Transit of Restricted Organisms Through the United States, also were the subject of a number of comments. Proposed § 322.25 stated that shippers may not transload restricted organisms in Hawaii. The restricted organisms would have to remain on, and depart for another destination aboard, the same aircraft on which the shipment arrived at the Hawaiian airport. This provision represented the most significant change from the current regulations, which do allow transloading. The remaining provisions of the proposed subpart, which pertained to such matters as documentation, packaging, notice of arrival, and inspection and handling, did not deviate significantly from the existing provisions in § 322.1 of the regulations.

Some commenters, in expressing their opposition to the proposed transiting conditions, cited the same concerns about the possible introduction of diseases and pests into Hawaii that they stated could result from imports of honeybees and honeybee germ plasm from Australia and New Zealand into the State. The possibility of a Varroa mite infestation was given as a reason for not allowing offloading or transloading of bees from New Zealand in Hawaii. One commenter argued that transloading of Australian bees in Hawaii should also be banned until a comprehensive Varroa mite survey verified the absence of that pest in Australia. A commenter suggested that Hawaii's airports lack the operational and procedural safeguards needed to prevent the escape of restricted organisms. Concern was also expressed about the possibility of transiting infected bees escaping into the Hawaiian environment as a result of an accident.

The Government of New Zealand also took issue with our proposed transiting conditions. Unlike the other commenters, however, New Zealand viewed the proposed conditions as too restrictive rather than too lenient. As restricted organisms, honeybees from New Zealand would not be eligible for transloading in Hawaii. The Government of New Zealand asked that consideration be given to retaining the current transiting conditions, which do allow transloading in Hawaii. New Zealand currently ships honeybees through Honolulu to Canada under the existing regulations and expressed a desire to be allowed to ship to the continental United States under the same conditions. It was argued that, due to the distance from New Zealand to the continental United States, restrictions on freight space, and New Zealand's desire to ship honeybees with the least possible stress and to provide premium quality honeybees to the U.S. market, direct shipping of honeybees from New Zealand for import into the continental United States, as required in proposed § 322.5, would be impracticable. New Zealand argued that it needed to be able to transit honeybees through Hawaii and to retain the right to transload shipments there onto aircraft other than the ones in which the shipments arrived. Though the New Zealand Government viewed the current transiting system as having been

successful, additional safeguards were suggested in comments submitted by that government's representatives in order to protect Hawaii's honeybee health status. These included requiring that shipments transit Honolulu at night, when honeybees are least active; requiring shipments to include *Apistan* (fluvalinate) strips; and requiring the *Apistan* strips to have been in contact with the honeybees for at least 24 hours prior to the shipment reaching the airport in Honolulu.

APHIS has taken all comments into consideration regarding the transit of bee shipments through Hawaii and decided not to make any changes to the proposed transiting conditions. As we have already noted, the proposed standards were closely based upon the existing requirements in § 322.1, which have proved effective in ensuring the safe transit through Hawaii of honeybees and honeybee semen from New Zealand. In some instances, the proposed conditions were more stringent. For example, both the existing and proposed regulations require that honeybees be packaged in enclosed containers covered with netting to ensure that no honeybees can escape, but the proposed rule, in § 322.27(a), also specified that the containers must be sufficiently secure to prevent the escape of organisms and the leakage of any contained materials. We are confident that foreign bees and bee products will be able to transit through Hawaii safely under the conditions that we proposed. Allowing shipments of bees to change planes, however, could increase the likelihood of an accidental release of bees or bee pests. Therefore, we find it necessary to retain the prohibition on transloading contained in proposed § 322.25(c).

In addition to the concerns expressed over possible risks resulting from the importation or transiting of live honeybees, some commenters also criticized the proposed conditions for importation of beeswax and honey for bee feed. Those two articles were classified as restricted articles in § 322.31 of the proposed rule. Section 322.33 specified that export certificates for beeswax must state that the beeswax has been liquified and that export certificates accompanying honey for bee feed must state that the honey has been heated to 212 °F for 30 minutes. Commenters argued that liquification of beeswax was not an effective means of preventing the spread of disease through that medium. Similarly, it was argued that heating honey to 212 °F may also fail to kill disease-carrying pathogens, such as American foulbrood spores, in the honey. Commenters also suggested that the heating process itself could make the honey toxic for bees. Some commenters also worried that contaminated honey imported as bee feed under proposed § 322.33 could find its way into the retail market for human consumption.

American foulbrood (*Paenibacillus larvae*) is the only bee malady that we are aware of that can be transmitted in beeswax that has been liquefied or in honey. Because American foulbrood is widespread in the United States, we do not regulate the internal movement of affected material, and citing the disease as a rationale for barring imports may be problematic under international trade agreements. In order to offer greater protection to the U.S. honeybee population, however, we are tightening the beeswax requirements somewhat in this final rule. As specified in § 322.30(a) of this final rule, the export certificate accompanying beeswax entering the United States must state that the beeswax has been liquified and that slumgum and honey have been removed. For the sake of clarity, we are adding a definition for *slumgum* to § 322.1. We define slumgum as the residue remaining after the beeswax rendering process. Slumgum is composed of beeswax mixed with debris or refuse that accumulates when wax cappings or comb are melted and may include wax moth cocoons, dead bees, bee parts, and other detritus from the colony. The claim that heated honey may be toxic to bees is not supported by sufficient data to cause us to change the final rule. Regarding the commenters' final point, the Food and Drug Administration would be responsible for ensuring that honey imported for bee feed does not get into the food supply.

In addition to the other risks cited by commenters opposed to the proposed rule, there was concern expressed that it could set a dangerous precedent. Under the rules of the World Trade Organization (WTO), it was suggested, APHIS might have difficulty justifying the prohibition or restriction of imports from other countries that wanted to export honeybees to the United States. The ultimate effect of the proposal, it was feared, would be to allow the importation of bees and queens from almost any country in the world, greatly increasing the risk of spreading diseases and pests to the U.S. bee population.

Regions that are not listed in § 322.4 as approved regions for the importation of honeybees, honeybee germ plasm, or other bees will be required to submit a formal petition to the Secretary of Agriculture for consideration for such approval. Such a petition would be followed by a thorough PRA, which would then be made available to the public for comment. If the results of the PRA suggest that a regulatory change is merited, i.e., that bees and bee products could safely be imported from the region under consideration, then APHIS may propose such a change. The proposed rule would be published in the **Federal Register**, and the public would have an opportunity to offer comments.

In their discussions of the possible risks of allowing imports of honeybees and related articles from Australia and New Zealand, many commenters focused on what they perceived as the shortcomings of the PRAs that APHIS carried out for those two countries. The PRAs provided the basis for the proposed rule. Various commenters asserted that the PRAs were not conducted in accordance with OIE guidelines; that the PRAs were insufficiently comprehensive in evaluating pest risks, lacking both depth and breadth and relying on old information; that they employed imprecise or unscientific terminology; and that the standards applied to Australia and New Zealand were less rigorous than those we apply domestically.

A commenter, referring to proposed OIE standards for PRAs for honeybees, questioned why APHIS did not use these standards as a basis for conducting its assessments of Australia and New Zealand. The commenter thought APHIS had proceeded in an ad hoc manner rather than relying on specific international standards that were available for use.

The OIE standards in question are proposed standards that have not yet been implemented. It is possible that finalization of the OIE standards could serve as an impetus to future rulemaking. In drafting the August 2002 proposed rule and this final rule, we did use the international standard that was available at the time of writing.

Some commenters stated that the information on which the PRAs were based was no longer current, particularly in the case of New Zealand. Commenters noted that the New Zealand site visit was conducted by APHIS in 1984, which was the year the risk assessment was initiated, and was of relatively short duration. It was suggested that the continued use of the original New Zealand PRA as a basis for the current rulemaking was not warranted. It was also claimed that previous critiques of that risk assessment had been ignored.

As noted in the preamble of the proposed rule, APHIS made the PRAs for both Australia and New Zealand

available for public comment prior to the publication of the proposed rule. On December 9, 1999, we published in the **Federal Register** (64 FR 68984, Docket No. 99–091–1) a notice of availability for the New Zealand PRA. On May 3, 2000, we published in the **Federal Register** (65 FR 25701, Docket No. 00–032–1) a notice of availability for the Australian PRA. We solicited public comment on each PRA for 60 days. During their respective 60-day comment periods, we received 23 comments on the New Zealand PRA and 6 comments on the Australian PRA. We responded to all comments. In March 2002, we updated the New Zealand PRA because, following its publication, Varroa mite was detected on the North Island of New Zealand. The updated New Zealand PRA includes a discussion of the detection of Varroa mite on the North Island of New Zealand and qualitatively assesses the effect of that parasite on importations of bees and bee products from New Zealand. We believe that our PRAs for Australia and New Zealand employed the best available sources of information to document the presence or absence of bee diseases and parasites in those countries. It is true that a site visit of New Zealand has not been conducted in recent years; however, we were repeatedly in contact with AQIS and MAF officials, as well as bee scientists from the USDA's Agricultural Research Service, during the preparation of the PRAs for Australia and New Zealand.

Some commenters argued that the PRAs were lacking in depth and scope. One commenter maintained that no U.S. scientist has yet done an in-depth study on diseases, pests, and viruses of New Zealand or Australian stock. It was suggested that serious study should be given to half-moon disorder, chronic bee paralysis virus, Kashmir bee virus (KBV), melanosis, and *Malphighamoeba mellificae*, all of which are known to occur in New Zealand.

As noted in Appendix II of the revised New Zealand PRA, which contains public comments on the PRA and APHIS' responses to those comments, neither KBV nor half-moon disorder is considered to be a significant disease by the OIE. Therefore, we cannot impose special import requirements on New Zealand queens and package bees based on these diseases. Chronic bee paralysis virus, melanosis, and *Malphighamoeba mellificae* are not known to have an economic impact on honeybees.

A commenter questioned why APHIS did not assess germ plasm and honeybees as separate items in separate risk assessments. The commenter argued that beekeepers are chiefly concerned about the risks posed by importing live honeybees but would support a standard protocol for imported germ plasm that would control the handling of that commodity.

APHIS does distinguish between live honeybees and honeybee germ plasm in evaluating the risks of importing each into the United States. Like the beekeepers cited by the commenter, we view imported live bees as having a greater potential for introducing bee diseases and pests into the U.S. bee population than imported germ plasm. While germ plasm can transmit genetic maladies, it will not carry viruses, bacteria, or parasites. Section 322.4 of the proposed rule provided for the importation of germ plasm from Australia, Bermuda, Canada, France, Great Britain, New Zealand, and Sweden, while allowing imports of live bees only from Australia, Canada, and New Zealand.

Another criticism of the PRAs was that the standards we applied to New Zealand and Australia were less rigorous than those we apply domestically. It was noted that while the continental United States has pest-free zones, we treat it as a single entity. Pests found anywhere in the continental United States are regarded as existing throughout the country. On the other hand, New Zealand is divided up into regions with and without pests.

Historically, APHIS has chosen not to regulate the interstate movement of honeybees because the frequent peregrinations of American beekeepers make such regulation extremely difficult. We have allowed the State agriculture regulatory agencies to oversee the apiculture industry at the State level. APHIS' Plant Protection and Quarantine and Veterinary Services divisions have been engaged in discussions of domestic honeybee health issues and are working together, along with honeybee-related trade associations and other organizations, such as the Apiary Inspectors of America, to develop solutions to perceived regulatory gaps or inequities.

An additional criticism of the PRAs was that they employed imprecise, inappropriate, or unscientific terminology. One commenter questioned whether the term ''negligible,'' which was employed in the preamble of the proposed rule to describe the level of risk of introducing exotic bee diseases or pests or unwanted subspecies into the United States by means of imports from Australia and New Zealand, was being used purely as a descriptive adjective or whether the term corresponded to numerical ratings. This commenter claimed that a term such as ''negligible'' cannot be science-based if it is not based upon a numerical rating.

We do not agree with the commenter's assertion that descriptive terms cannot be science-based. APHIS performs both qualitative and quantitative PRAs. The two types of assessments are similar in most respects; however, in quantitative PRAs, quarantine pests are examined in greater detail, and a quantitative assessment of the likelihood of introduction is provided. Criteria for performing PRAs for regions wanting to export honeybees, honeybee germ plasm, and other bees to the United States were set out in the August 2002 proposed rule. These procedures were followed when we conducted the PRAs for Australia and New Zealand. The primary elements of a honeybee-related PRA, as delineated in the proposed rule, are as follows: Identifying bee diseases and parasites of quarantine significance to the United States, as well as undesirable species and subspecies of honeybees associated with the importation; assessing the likelihood of the introduction of these diseases, parasites, and undesirable species and subspecies of honeybees into the United States, as well as the consequences of introduction; and considering the effectiveness of the regulatory system of the exporting region to control and prevent occurrences of diseases, parasites, and undesirable species and subspecies of honeybees. We evaluated these factors for Australia and New Zealand using information obtained from the governments of the two countries, as well as reviews of the topical scientific literature and site visits. Our conclusion, therefore, that the risks of introducing various pests and diseases into the United States as a result of allowing imports from Australia and New Zealand were low (the term ''negligible'' was only used in the preamble of the proposed rule and not in the PRAs themselves) was scientifically based.

Finally, one commenter thought that we should have done a ''risk/benefit analysis'' rather than a ''risk assessment,'' suggesting that the former would have led us to conclude that allowing imports from Australia and New Zealand was not advisable. This commenter claimed that there would be no benefits accruing to the U.S. beekeeping industry as a result of the proposal, only risks.

Risk assessment is the internationally accepted standard for this type of evaluation and satisfies our international trade obligations. Under the international trade agreements to which it is a party, the United States is

obliged to consider imports of honeybees from countries where science-based analyses indicate acceptable risk levels and/or adequate risk management tactics. The methods used to initiate, conduct, and report on the PRAs for Australia and New Zealand are consistent with guidelines provided by the United Nations Food and Agriculture Organization and by the OIE.

A number of researchers took issue with the dead bee provisions in subpart E of the proposed rule. Under proposed § 322.31, dead bees of any genus were considered restricted articles. Commenters objected to this classification, arguing that dead bees do not pose a realistic threat of disease or parasite transmission because bacterial and viral diseases will not survive in dead hosts. Also, the manner in which bee specimens are killed and stored further diminishes the risk of their transmitting diseases or pests to live bees. Killing bees in cyanide or carbon tetrachloride will likely result in the death of any associated disease organisms or bee parasites as well. Dried bee specimens in museums are frozen, which would further reduce the likelihood of the survival of parasites, and housed in Schmidt boxes or museum drawers and are permanently isolated from contact with live bees. One commenter questioned the requirements in proposed § 322.32, under which dead bees entering the United States must be immersed in a solution containing at least 70 percent alcohol, immersed in liquid nitrogen, or pinned and dried in the manner of specific specimens. The commenter favored allowing additional fluids for immersion, arguing that alcohol does not always provide the best means of DNA preservation. Another commenter suggested that the paperwork burden that the requirements would place upon APHIS will inevitably lead to multi-month delays in granting permits, which will seriously impede or even stop taxonomic and ecological research collaborations that underlie bee conservation efforts.

The dead bee provision that most concerned the commenters was the requirement in § 322.32(b) of the proposed rule that such specimens be inspected at the port of entry in the United States. Some commenters suggested that this requirement could hamper scientific research. One commenter, citing an instance in which the British Museum of Natural History refused to lend to his research group samples of type and other bees because of the probability that packages would be opened and repacked inexpertly, asserted that the proposed inspection requirement would leave U.S. researchers unable to borrow bees from foreign museums. To eliminate the need for opening and repacking packages of dead bees at the port of entry, commenters advocated permitting systems that would allow packages to be shipped to *bona fide* institutional insect collectors without visual inspections of the specimens and viewable shipping boxes.

The proposed import requirements for dead bees in the superfamily *Apoidea* substantially reduce the regulatory burden placed upon importers. The regulations in § 319.76–3 have required a Plant Pest Permit (Plant Protection and Quarantine form 526 and APHIS form 599) for importation of dead bees. Based on the number of comments, many scientists have been in violation of the existing bee regulations, as we issue very few permits for dead bees. Proposed § 322.32 did not require the Plant Pest Permit, mandating only that the bees be properly preserved and declared for possible inspection at the port of entry. We regret any inconvenience that research scientists may experience, but must point out that the periodic inspection of packages at the port of entry by DHS personnel is likely, with or without our inspection requirement. Removal of dead bees from the list of restricted articles would do nothing to reduce that likelihood, so they will remain on the list. We did agree with the commenter who suggested that we needed to accommodate additional preservative (fixative) solutions, and we have amended the final rule accordingly. The amended provision states that imported dead bees must be immersed in a solution containing at least 70 percent alcohol or a suitable fixative for genetic research.

Smaller numbers of commenters raised various other issues. Representatives of the Governments of Australia and New Zealand commented on issues of concern to those countries. Other commenters discussed the proposed ban on the importation of pollen for bee feed and restrictions on the importation of used beekeeping equipment, restrictions on the interstate movement of honeybee germ plasm and bee products into Hawaii, the possible benefits of allowing imports of honeybees from additional regions and other species of bees, the terminology employed in the proposed rule, packaging for bees other than honeybees, requirements for researchers who can import restricted organisms, States' authority to regulate bees and bee pests, and our economic analysis.

The Government of Australia, while generally favoring the proposed rule, had some objections to particular provisions. In addition to the comments on the proposed inspection procedures, which we discussed earlier, Australia also took issue with certain provisions in § 322.6 of the proposed rule pertaining to the importation of adult honeybees into Hawaii. Proposed paragraph (a)(2)(ii) of § 322.6 indicated that the export certificate for bees imported into Hawaii must state that the hives from which the honeybees in the shipment were derived were inspected individually and showed no sign of Varroa mite, tracheal mite, or African honeybee. Subsequent paragraphs specified that the certification must also state that the honeybees in the shipment were (1) derived exclusively from an apiary situated in the center of a zone of 50 kilometers (31 miles) in radius, in which special diagnostic tests, as set forth by the OIE, did not reveal any sign of the presence of Varroa mite for at least the past 2 years; and (2) derived exclusively from an apiary situated in the center of a zone of 5 kilometers (3.1 miles) in radius, in which no case of tracheal mite has been reported for at least the past 8 months. Australia contended that these requirements were unwarranted because it, like Hawaii, is free of Varroa mite, tracheal mite, and African honeybee—a status confirmed by a program of targeted surveillance and routine inspections of hives by Government apiary officers. It was argued, therefore, that official certification that Australia remains free of Varroa mite, tracheal mite, and African honeybee would provide a satisfactory level of assurance that a shipment of Australian honeybees could safely be imported into Hawaii.

These comments are moot now that we have determined that we will not allow the importation of honeybees into Hawaii. It should be noted that our proposed requirements were drawn directly from the OIE security procedures recommended in Article 3.4.2.3.

The Government of New Zealand also supported most aspects of the proposed rule, arguing that imports of honeybees and honeybee germ plasm from New Zealand could offer the U.S. beekeeping industry the opportunity to introduce new genetic stock from a source that poses no disease or pest hazards, and that the resulting increase in the biodiversity of the U.S. honeybee population could reduce its vulnerability to such pests as Varroa mite. Like the Government of Australia, however, New Zealand did offer some criticisms of particular provisions in the

proposed rule. In addition to its comments on the provisions for transiting of honeybees from New Zealand through Hawaii, which we discussed earlier, the Government of New Zealand took issue with proposed § 322.6(a)(1)(iii), which stated that the export certificate accompanying honeybees shipped to the United States must certify that the bees in the shipment were produced in the exporting region and are the offspring of queens and drones or semen also produced in the exporting region. The Government of New Zealand requested that we apply this condition to first-generation bees only. It was argued that the modified requirement would still be sufficiently rigorous to satisfy any concerns that APHIS might have about the possibility of bees of lesser health status or their germ plasm being imported into New Zealand and then exported to the United States. Currently, New Zealand does not allow the importation of adult honeybees or honeybee germ plasm, but it may in the future, and it would like to be able to export offspring or germ plasm from such imported bees provided that they are second generation or more.

We will not be making any changes to the final rule as a result of these comments. The intent of our requirements is to have New Zealand and Australia demonstrate that the bees they are exporting were derived from stock that is genuinely of Australian or New Zealand origin and thereby free from bee maladies widely prevalent in Asia. If New Zealand were to allow imports of honeybees, we would not want these bees exported to the United States without an opportunity to prepare a PRA and seek public comment. We do not view our export certification requirements as excessively onerous. Finally, the New Zealand representative may have overstated the potential benefits to the U.S. honeybee population of allowing imports. It is unlikely that the genetic stock from New Zealand will help to diminish the vulnerability of U.S. honeybees to Varroa mite, as New Zealand has not had Varroa long enough to select for resistance. Similarly, useful genetic stocks that will respond to our growing problem with antibiotic-resistant foulbrood are not likely to come from New Zealand or Australia.

In addition to the Canadian Government's criticisms of our proposed certification and export requirements, two commenters from Canada, one a Government representative and the other a producer of honey and other products, took issue with our ban on the importation of bee pollen for bee feed in proposed § 322.2(b)(2) and our restrictions on the importation of used beekeeping equipment in proposed § 322.2(b)(3)(ii). The commenters viewed these proposed changes to the regulations as unjustified. It was suggested that the relative honeybee disease risk from importation of bee pollen and used beekeeping equipment was no greater than that associated with the import of Canadian honeybees, which is currently permitted under the regulations. It was also argued that the ban on pollen could hamper local U.S. companies that depend on Canadian bee pollen to rear bumblebees. One of the commenters suggested that in the final rule we might want to narrow the pollen prohibition, maintaining a ban on pollen for use in rearing honeybees but not for use in rearing bumblebees, since honeybee diseases present in bee pollen do not affect bumblebees. The commenter also suggested that APHIS may wish to consider an import requirement for the irradiation of pollen or other materials for bee feed when the disease risk so warrants.

We are not making any changes to the final rule in response to these comments. This final rule will allow the continued importation of honeybees into the United States from Canada, but such imports will now be subject to the same conditions as will apply to imports from Australia and New Zealand. As specified in § 322.6, export certificates for both honeybees and honeybee germ plasm must include certifications of origin. One reason why we view such certification as necessary for Canadian imports is our concern about the smuggling of bees through Canada into the United States. These same concerns apply to bee pollen and used beekeeping equipment from Canada. If suitable techniques for sterilizing bee pollen and used beekeeping equipment are developed and are validated by means of efficacy studies and proper documentation, the regulations could be amended to accommodate imports of bee pollen and used beekeeping equipment from Canada.

Some commenters from Hawaii questioned the ban on interstate movement of honeybee germ plasm into that State in § 322.2 of the proposed rule and also argued that Hawaiian beekeepers should be allowed to bring in pollen from the continental United States. It was suggested that semen brought in from the continental United States could be used to introduce disease-resistant traits to Hawaiian bees. It was also argued that because the tropics are known for pollen shortages, the possibility of importing pollen into Hawaii from the continental United States for supplemental bee feeding should not be foreclosed.

The commenters' concerns are duly noted, and the prohibition on the interstate movement of honeybee germ plasm into Hawaii has been removed from the final rule. Under this final rule, honeybee semen is considered a restricted organism and can be imported or moved interstate under permit into Hawaii for research by university, Federal Government, or State officials in accordance with the regulations. The final rule will not allow interstate movement of pollen into Hawaii, however, and will retain the prohibition in § 322.2 on the importation of pollen into the United States for use as bee feed. The risk of disease transmission from bee pollen to honeybees, along with plant disease risks, make the importation of bee pollen into the United States and the interstate movement of bee pollen to Hawaii inadvisable. At some point in the future, under a separate risk assessment, we could amend the regulations to allow interstate movement of bee pollen into Hawaii or importation of bee pollen into the United States if the pollen is irradiated.

Some commenters favored allowing the importation of honeybees from additional regions or allowing in additional bee species. One commenter wrote to advocate allowing the importation of honeybees from Scandinavia and northwestern Russia into Alaska. According to this commenter, it is very difficult at present to start a breeding program in Alaska because there are no local strains of feral honeybees there and because bees imported from southern locations tend not to survive the Alaskan winter. Allowing imports from Scandinavia and northwestern Russia could solve this problem faced by Alaskan beekeepers. The commenter also argued that Alaska, because of its isolation, would be a good location to carry out research on bees. Another commenter favored allowing imports of alfalfa leafcutting bees from New Zealand. The proposed rule allowed such imports only from Canada. The commenter argued that the alfalfa leafcutting bee does not carry enemies or diseases of honeybees or bumblebees and that all species of insects that can occur among leafcutting bee cells are easily eliminated by appropriate management. Allowing these bees to be imported into the United States from New Zealand would give American alfalfa seed growers an alternative to Canada as a supplier of these bees, according to the commenter.

Before APHIS could allow such imports, formal PRAs would need to be carried out for imported honeybees from Scandinavia and northwestern Russia and imported alfalfa leafcutter bees from New Zealand. PRA requirements are contained in § 322.12 of this final rule. As stated in § 322.12(a), requests for PRAs must be initiated by the national government of the region wishing to export bees or bee products to the United States.

One commenter questioned the terminology we used § 322.6(c) of the proposed rule, which stated that for bees other than honeybees, the export certificate must certify that the bees in the shipment were produced in the exporting region and are the offspring of queens and drones or semen also produced in the exporting region. Noting that alfalfa leafcutter bees and some other species do not have queens or drones, the commenter suggested substituting ''reproductive females and males'' for those terms.

The commenter's concerns are duly noted, and the oversight has been corrected. In this final rule, § 322.6(c) states that the export certificate must certify that the bees in the shipment were produced in the exporting region and are the offspring of bees or semen also produced in the exporting region.

The same commenter took issue with a provision in § 322.8 of the proposed rule pertaining to the packaging of shipments of bees other than honeybees. Paragraph (b)(2)(ii) stipulates that packages of bees other than honeybees may not contain any soil. Noting that *Osmia lignaria* and *O. cornifrons*, both species that would be allowed importation under the proposed rule, use soil in creating mud partitions in their nests, the commenter questioned whether it was APHIS' intent to prevent the importation of filled nests of *Osmia* with their mud partitions. The commenter added that she did not know of any information to suggest that there is or is not a risk of importation of pests, including microorganisms, in the mud partitions in *Osmia* nests.

It is not our intent to prevent the importation of filled nests of *Osmia*. While the nest cells of *O. lignaria* and *O. cornifrons* are made of soil, the soil is highly manipulated and combined with secretions that render it a changed substance that is unlikely to serve as a medium for the transmission of diseases or pests. Therefore, § 322.8(b)(2)(ii) of this final rule allows for the importation of soil in packages of bees other than honeybees if the soil is used in nest cells that include developing, immature bees. In addition, § 322.5(d), which contains general conditions for the importation of bees other than honeybees, will now provide for the importation of ''essential nest substrate,'' as well as for live adult bees and live brood.

The same commenter also argued for a change to § 322.15(b) of the proposed rule, which specified that restricted organisms may only be imported into the United States by Federal, State, or university researchers. It was argued that importation of restricted organisms by independent researchers should be allowed if such researchers are able to meet the post-entry handling requirements of proposed § 322.24.

We have not made any change to the final rule in response to this comment. The conditions of proposed § 322.15, under which university and State researchers could work for the first time with certain organisms defined in that section as restricted organisms, were substantially more liberal than the regulations that have been in place up to now. For example, the existing § 322.1 has allowed only USDA personnel to import honeybees from any region other than Canada. A decision to conduct research on a restricted organism comes with considerable responsibility, liability, and regulatory oversight. We believe that any further loosening of the restrictions on the importation of restricted organisms could jeopardize APHIS' ability to safeguard our apiculture industry by tracking disease and pest introductions, should any occur.

One commenter suggested that § 322.17 of the proposed rule, which contained procedures for review by APHIS of permit applications for importing restricted organisms and criteria for denial or cancellation of permits, could infringe upon State prerogatives. Proposed paragraph (a)(1) stated that APHIS may consult with State officials during the permit review process. Proposed paragraph (a)(2) stated, among other things, that APHIS will transmit a copy of the permit application, along with its anticipated decision on the application, to the appropriate regulatory official in the destination State for review and recommendation; that APHIS will consider the State's response before taking final action; and that if a State makes no recommendation within 20 business days, concurrence with APHIS' decision is assumed. The commenter argued that States need to be guaranteed a ''reasonable'' timeframe for review and that the rule must include reference to the State's authority to regulate bees and pests brought to the State.

We will not be making any changes to the final rule as a result of this comment. In matters where APHIS is regulating importation and/or interstate transport of a plant pest (7 CFR 330.200), the authority lies with APHIS, as a Federal agency, to issue the necessary permit.

Finally, some commenters disputed our observations in the economic analysis prepared for the proposed rule that continental U.S. beekeepers experience shortages of queens in early spring and that California fruit and nut producers may experience shortages of pollinators at that time of year. We argued that, based on the high demand for pollination services and uncertainty about whether enough bees could be brought into the continental United States from Hawaii to meet that demand, the price of Hawaiian early-spring honeybees would not be likely to fall significantly as a result of allowing imports from Australia and New Zealand.

It is the observation of APHIS' entomologists working with the bee industry that there are shortages of domestic queen bees and package bees in late winter and early spring, before production in Georgia, Texas, Florida, and other bee-producing States reaches its full capacity.

Miscellaneous

In addition to changes we have made in response to commenters' suggestions, in response to the OIG audit referred to earlier and to post-September 11 security concerns, we have also made a slight modification to the permitting process for the importation of restricted organisms. On March 1, 2003, the APHIS Permit Unit instituted a requirement that each permit condition on a PPQ Form 526 be initialed by the permit applicant prior to issuance of the permit. Accordingly, § 322.15(b)(1) of this final rule provides, among other things, that the applicant must first initial each condition of the proposed permit and then return the proposed permit to the Permit Unit before we will issue a signed, valid permit.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have prepared a final regulatory

flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities. The discussion also serves as our cost-benefit analysis under Executive Order 12866.

In the initial regulatory flexibility analysis that accompanied the proposed rule, we solicited comments regarding the number and kinds of small entities that could incur benefits or costs from implementation of the proposed rule and the economic effects of those benefits or costs. We did not receive such information, although, as we have already noted, a few commenters took issue with our discussion in that initial analysis of shortages of domestic queens and pollinators in early spring. We stand by our observation that such shortages do, in fact, exist at a given price.

This final rule is intended to consolidate and amend the regulations for the importation of honeybees and honeybee semen and the regulations established to prevent the introduction of exotic bee diseases and parasites through the importation of bees other than honeybees, certain beekeeping byproducts, and used beekeeping equipment. Among other things, we are allowing, under certain conditions, the importation into the continental United States of honeybees from Australia and honeybees and honeybee germ plasm from New Zealand. These changes will make these regulations more consistent with international standards, update them to reflect current research and terminology, and simplify them and make them more useful.

Honey Production in the United States

The United States is the second largest honey producer in the world. In 2003, the United States had a registered stock of close to 2.6 million honeybee colonies, as shown below in table 1. These honeybee colonies were owned by beekeepers with 5 or more colonies and produced 181 million pounds of honey valued at $255 million. Largely due to bee parasite problems (*i.e.*, Varroa mite), the number of honeybee colonies in the United States decreased from 3.4 million in 1994 to 2.5 million colonies in 2001.

TABLE 1.—HONEYBEE COLONIES, HONEY PRODUCTION, AND VALUE IN THE UNITED STATES, 1997–2003

Year	Honeybee colonies	Honey production (in pounds)	Value of production (in U.S. dollars)
1997	2,631,000	196,536,000	$147,795,000
1998	2,633,000	220,316,000	147,254,000
1999	2,688,000	205,250,000	126,075,000
2000	2,620,000	220,339,000	132,742,000
2001	2,513,000	185,926,000	127,060,000
2002	2,574,000	171,718,000	228,338,000
2003	2,590,000	181,096,000	255,791,000

Source: Honey Report (several issues), National Agricultural Statistics Service (NASS), Agricultural Statistics Board, U.S. Department of Agriculture.

An estimated 125,000 to 150,000 beekeepers in the United States operate the 2.59 million honeybee colonies (NASS, Honey Report, 2004). Less than 2 percent of these beekeepers in the United States are full-time (commercial) operators (*i.e.*, with 300 or more bee colonies). More than 90 percent are hobbyists (*i.e.*, with fewer than 25 bee colonies). The remainder are part-time (*i.e.*, with 25 to 299 bee colonies).

According to the 1997 U.S. Census of Agriculture, there were 7,688 commercial apiaries registered in the United States in that year that sold honey and 910 commercial apiaries that offered their honeybees for pollination services (table 2). Total annual sales of honey and other bee products amounted to $138.23 million that year. California, Florida, South Dakota, North Dakota, Minnesota, and Texas accounted for more than half of both U.S. bee colonies and honey production. Hawaii, with 38 registered commercial apiaries in 1997, was responsible for 0.5 percent of U.S. domestic commercial sales. However, Hawaii is the only U.S. State that is able to export honeybees because of its disease-free status.

TABLE 2.—HONEYBEE COLONIES AND HONEY, INVENTORY AND SALES IN MAJOR STATES AND HAWAII IN 1997

State	Inventory of all U.S. registered apiaries [1]	Commercial sales of bee colonies and honey					
		(a) Colonies of bees		(b) Honey		Value of sales (a + b)	% of U.S. sales
		Apiaries	Number	Apiaries	Pounds		
California	1,021	68	79,239	733	28,305,056	$23,167,000	16.8
Florida	645	35	5,524	482	16,471,427	13,461,000	9.7
S. Dakota	219	16	8,305	132	14,225,757	11,351,000	8.2
N. Dakota	144	11	2,184	120	12,803,245	10,330,000	7.5
Texas	989	57	106,028	360	8,418,792	7,906,000	5.7
Minnesota	428	37	9,813	258	9,311,475	7,744,000	5.6
Sum of 6	3,446	224	211,093	2,085	89,535,752	73,959,000	53.5
Hawaii	75	4	16	34	949,769	735,000	0.5
United States	17,469	910	380,463	7,688	158,943,634	138,228,000	

Source: National Agricultural Statistics Service (NASS), 1997 U.S. Census of Agriculture, USDA.
[1] Both commercial and hobbyists' apiaries.

Bee Pollination in the United States

Honeybees, in addition to producing honey, play a vital role in the pollination of U.S. agricultural crops. In 1987, the annual value of agricultural production dependent upon pollination by honeybees in the United States was $9.6 billion; by 1999, that value had risen to $14.6 billion. More than 40 percent of fruit and nut production in the United States depends upon honeybee pollination ($4.76 billion out of $10.94 billion average annual value), as does more than 70 percent of vegetable and melon production ($2.98 billion out of $3.96 billion), and around 21 percent of field crop production ($6.82 billion out of $32.06 billion).[1]

Other bees besides honeybees also provide important pollination services. The alfalfa leafcutter bee (*Megachile rotundata*), for example, has become the principal alfalfa pollinator in several Western States. Other bee species that are commonly used for pollination purposes are bumblebees (*Bombus occidentalis* and *B. impatiens*), blue orchard bees (*Osmia lignaria*), and horn-faced bees (*O. cornifrons*). Bumblebees are pollinators of many plants, especially those growing at high elevations and in greenhouses. Blue orchard bees are an alternate pollinator species of orchard crops, such as almonds. Apiculture pollination is especially vital to the fruit, nut, and vegetable production of California and Florida. As the demand for these products increases, so, too, does the corresponding demand for bee pollination services.

International Bee Trade

Reported data on U.S. imports of bees exist only for the alfalfa leafcutter bee, a species used only for crop pollination. The value of U.S. imports of alfalfa leafcutter bees from Canada increased from $6.5 million in 1996, to $11.4 million in 1999, and then declined to $5 million in 2001 (table 3). No imports of alfalfa leafcutter bees were recorded in 2002 or 2003. Alfalfa leafcutter bee larvae have generally been imported into the United States exclusively from Canada.

TABLE 3.—U.S. IMPORTS OF LIVE LEAFCUTTER BEE (NON-APIS) LARVAE, 1996–2001

Year	Exporting country	U.S. customs value (in U.S. dollars)
1996	(1) Canada	$6,526,580
	World	6,528,680
1997	(1) Canada	9,319,641
	World	9,319,641
1998	(1) Canada	10,382,341
	World	10,382,341
1999	(1) Canada	11,393,247
	World	11,393,247
2000	(1) Canada	7,169,000
	(2) United Kingdom	5,000
	World	1,174,000
2001	(1) Canada	5,033,000
	(2) Belgium	3,000
	World	5,036,000
2002	None	0
2003	None	0

Source: U.S. Department of Commerce and World Trade Atlas. Commodity code (0106005030), Leaf Cutter Bee Larvae, Live.

There are no data available on traded honeybees and honeybee queens, except for exports from New Zealand (table 4) and imports into Canada (tables 5 and 6). These data provide an indication of the size of trade of honeybees amongst the biggest traders. Canada's largest trading partners are the United States for honeybee queens and New Zealand for honeybee workers.[2] International trade data on honeybees are not readily available, because only when a country requires an import or an export certificate does it report the corresponding data. For example, Canada requires import certificates for honeybees and thus reports only import data.

Under this rule, an import permit will be required for restricted organisms (honey brood in the comb, all bees and bee germ plasm from nonapproved regions, and species of honeybees not listed in § 322.5(d)(2)). There is no cost for an import permit.

TABLE 4.—NEW ZEALAND'S EXPORTS OF HONEYBEE QUEENS AND HONEYBEE PACKAGES, 1996–2000

Year	Honeybee queens	Honeybee packages (1.5 kg)
1998	20,815	25,722
1999	16,872	17,506
2000	18,113	14,056
2001	14,287	12,631
2002	10,780	18,028

Source: New Zealand Ministry of Agriculture and Forestry (MAF).

TABLE 5.—CANADIAN IMPORTS OF LIVE HONEYBEE QUEENS FROM MAJOR SUPPLIERS, 1996–2001

[in Canadian dollars]

Countries	1996	1997	1998	1999	2000	2001
United States	$545,392 (52%)	$708,279 (71%)	$2,241,361 (81%)	$1,616,708 (82%)	$1,758,663 (82%)	$1,805,442 (82%)

[1] "The Value of Honey Bees as Pollinators of U.S. Crops in 2000." *Bee Culture Magazine,* March 2000.

[2] Hawaii is the only U.S. State that may export honeybees.

TABLE 5.—CANADIAN IMPORTS OF LIVE HONEYBEE QUEENS FROM MAJOR SUPPLIERS, 1996–2001—Continued

[in Canadian dollars]

Countries	1996	1997	1998	1999	2000	2001
New Zealand	$325,864 (31%)	$143,953 (14%)	$225,176 (8%)	$102,849 (5%)	$62,436 (3%)	$27,475 (1%)
Australia	$183,540 (17%)	$150,870 (15%)	$99,915 (4%)	$168,356 (9%)	$77,170 (4%)	$79,436 (4%)
People's Republic of China	.....	.....	$178,886 (7%)	$59,058 (3%)	$85,483 (4%)	$125,815 (6%)
Italy	.....	.....	$7,417	$17,065	$7,835	$8,620
Argentina	.....	.....	0	0	$28,219	0
France	.....	.....	0	$187	$6,446	$13,014
Germany	.....	.....	$2,228	$12,104	$800	$3,390
United Kingdom	.....	.....	$1,384	$4,818	$1,033	$3,304
Taiwan	.....	.....	$3,353	$1,114	$2,254	0
Togo	.....	.....	$5,832	0	0	0
Denmark	.....	.....	$274	0	$67	$4,477
Brazil	.....	.....	0	0	0	$2,431
Norway	.....	.....	0	$419	$1,951	0
Netherlands	.....	.....	$413	0	$1,267	0
Malaysia	.....	.....	0	0	$404	0
Japan	.....	.....	0	$145	0	$153
India	.....	.....	0	$93	0	0
Total	$1,054,796	$1,003,102	$2,766,239	$1,982,916	$2,034,020	$2,073,557

Source: Agricultural Canada, Horticulture and Special Crops Division, Commodity HS Code 0106.000030.

TABLE 6.—CANADIAN IMPORTS OF LIVE HONEYBEES, EXCEPT QUEENS, 1996–2001

[in Canadian dollars]

Countries	1996	1997	1998	1999	2000	2001
New Zealand	$1,240,178 (83%)	$1,931,210 (73%)	$1,659,455 (74%)	$778,019 (56%)	$295,089 (43%)	$304,074 (41%)
United States*	$161,077 (11%)	$346,642 (13%)	$368,430 (16%)	$195,102 (14%)	$166,364 (24%)	$179,974 (24%)
Australia	$93,551 (6%)	$375,476 (14%)	$176,165 (8%)	$423,729 (30%)	$229,089 (33%)	$262,365 (35%)
Netherlands	0	0	$45,490	0	0	0
Total	$1,494,806	$2,653,328	$2,249,540	$1,396,850	$691,398	$746,413

Source: Agricultural Canada, Horticulture and Special Crops Division, Commodity HS Code 0106.0000

* The State of Hawaii only.

Potential Effects for U.S. Entities

In 1997, California honeybee producers sold $18.4 million worth of honeybee queens, package bees, and nucs (*i.e.*, 3, 4, or 5 frames of bees with brood and a laying queen). Sales from the rest of the United States brought the U.S. total sales of honeybee queens, package bees, and nucs to about $30 million for 1997. Since then, there have been slight increases in prices for honeybee queens and package bees, reflecting increased demand. Domestically produced honeybee queens currently sell for an average of $10 to $12 per queen, but their price may range between $3 and $40, depending on the season. Queens possessing unique or exceptional characteristics are occasionally auctioned off for hundreds of dollars. Domestically produced package bees currently sell for between $30 and $42 for a 3-pound colony.

This rule places U.S. produced queens and package bees, for the first time, in direct competition in the domestic market with imports of these types of bees from Australia and New Zealand. Imported bees are expected to arrive between early spring (end of March/early April) and the end of May. Because of seasonal differences between the United States and Australia and New Zealand, the adoption of this rule is expected to have a small, if any, negative impact on continental U.S. apiarists whose bees are ready to pollinate crops just as Australian and New Zealand bee imports cease with the beginning of winter in the southern hemisphere.

Because of the expected shipping season for honeybees from Australia and New Zealand, the greatest potential impact of this final rule will likely be on bee producers in Hawaii who produce honeybees year-round. Honeybees, particularly queen bees, from Australia and New Zealand will probably enter the U.S. market during early spring (*i.e.*, the beginning of active reproduction in bee colonies and a critical time for queen introduction). Traditionally, only Hawaii, because of its tropical climate, has been able to provide queens to U.S. beekeepers during this time period. Therefore, imports of queens from Australia and New Zealand may affect the prices of all queens sold during early spring. However, we do not expect this rule to have a significant economic effect on Hawaiian queen producers or other U.S. beekeepers for two reasons. First, data from imports into Canada of queens and package bees demonstrate that Hawaiian queens have a strong marketability; of the queens imported into Canada between 1997 and 2001, Hawaii supplied on average 80 percent,

while Australia and New Zealand supplied on average only 7 percent and 6 percent, respectively (table 5). Second, there have been reports from U.S. beekeepers of an insufficient supply of queens that are needed to revitalize bee colonies in early spring. California fruit and nut producers, in particular, also experience shortages of pollinators, as honeybees from the continental United States are still in winter hibernation and those from Hawaii are not enough to meet demand at that time of the year. Therefore, based on the high demand for pollination services and the uncertainty regarding the amount of imports to fill this demand, the price of Hawaiian early spring honeybees is not expected to fall significantly with the importation of honeybees. In general, expanded supplies of honeybees made possible through this action may reduce their price only slightly if demand is elastic, with greater price decreases possible if demand is inelastic.

While Hawaiian suppliers may witness some price decline, such losses to suppliers are not expected to exceed gains to purchasers of bees, who in general will benefit by increased availability of honeybees, particularly queens, during early spring. However, despite our requests for information regarding the economic impact of this rulemaking, we were unable to obtain data on the volume of queens or package bees that may be imported into the United States from Australia and New Zealand or on the potential demand for imports of queens and package bees from Australia and New Zealand. Therefore, we cannot quantitatively assess the effects those imports may have on U.S. producers of queen and package bees.

Foreign government inspectors visit their countries' apiaries twice a year and provide their honeybee producers with health certificates for exporting these bees. The price of the export certificate is included in the sale price of these honeybees. The fees that the Australian, New Zealand, and Canadian Governments charge their bee producers for the certificates are small.

Economic Effect on Small Entities

According to the North American Industry Classification System used by the Small Business Administration, honeybee farms and honey production are included under the ''other animal production'' category 1129, as subcategory 112910 ''apiculture.'' This industry comprises establishments primarily engaged in raising bees; collecting honey; and/or selling queen bees, packages of bees, royal jelly, bees' wax, propolis, venom, or other bee products. Such entities are considered small if they have annual receipts of $750,000 or less. Therefore, most of the apiaries that are affected by this rule qualify under this definition of a ''small entity.'' Specifically, only 20 to 50 apiaries out of 17,469 total apiaries in 1997 had more than $750,000 of annual sales. We do not expect that U.S. apiarists, or importers and distributors of bees and bee equipment, large or small, will be significantly affected by this rule.

As discussed above, the number of honeybee colonies in the United States has fallen from 3.4 million in 1994, to 2.5 million in 2001, due to Varroa mite, an exotic bee parasite. Meanwhile, the demand for honeybees and other pollinating bees continues to increase, especially during the early spring months when continental U.S. bees are not available to pollinate almonds and plums in California. Therefore, greater access to bee imports from more countries will benefit U.S. agriculture in general.

Alternatives Considered

An alternative to this rulemaking was to make no changes in the regulations. After consideration, we rejected this alternative because there appears to be minimal disease or parasite risk, or risk of introduction of undesirable species of honeybees, associated with imports of bees from the regions we are designating as approved regions. Further, the changes to the regulations contained in this document will bring the regulations into accord with international standards for the trade of bees and with international trade agreements entered into by the United States.

This final rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading ''Paperwork Reduction Act.''

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0207.

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

List of Subjects

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 322

Bees, Honey, Imports, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR chapter III as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§§ 319.76, 319.76–1, 319.76–2, 319.76–3, 319.76–4, 319.76–5, 319.76–6, 319.76–7, 319.76–8 [Removed]

■ 2. In part 319, ''Subpart—Exotic Bee Diseases and Parasites,'' §§ 319.76 through 319.76–8, is removed.

■ 3. Part 322 is revised to read as follows:

PART 322—BEES, BEEKEEPING BYPRODUCTS, AND BEEKEEPING EQUIPMENT

Subpart A—General Provisions

Sec.

Subpart B—Importation of Adult Honeybees, Honeybee Germ Plasm, and Bees Other Than Honeybees From Approved Regions

Authority: 7 U.S.C. 281; 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Subpart A—General Provisions

§ 322.1 Definitions.

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

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Bee. Any member of the superfamily *Apoidea* in any life stage, including germ plasm.

Beekeeping byproduct. Material for use in hives, including, but not limited to, beeswax for beekeeping, pollen for bee feed, or honey for bee feed.

Beekeeping equipment. Equipment used to house and manage bees, including, but not limited to, bee boards, hive bodies, bee nests and nesting material, smokers, hive tools, gloves or other clothing, and shipping containers.

Beekeeping establishment. All of the facilities, including apiaries, honey houses, and other facilities, and land that comprise a proprietor's beekeeping business.

Brood. The larvae, pupae, or postovipositional ova (including embryos) of bees.

Destination State. The State, district, or territory of the United States that is the final destination of imported bees, beekeeping byproducts, or beekeeping equipment.

Germ plasm. The semen and preovipositional ova of bees.

Hive. A box or other shelter containing a colony of bees.

Honeybee. Any live bee of the genus Apis in any life stage except germ plasm.

Inspector. Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to carry out the provisions of this part.

Office International des Epizooties (OIE). The organization in the Food and Agriculture Organization of the United Nations responsible for the International Animal Health Code, which includes a section regarding bee diseases in international trade.

Package bees. Queen honeybees with attendant adult honeybees placed in a shipping container, such as a tube or cage.

Queen. The actively reproducing adult female in a colony of bees.

Slumgum. Residue remaining after the beeswax rendering process. It is composed of beeswax mixed with debris or refuse that accumulates when wax cappings or comb are melted. The residue can include wax moth cocoons, dead bees, bee parts, and other detritus from the colony.

Undesirable species or subspecies of honeybees. Honeybee species or subspecies including, but not limited to, *Apis mellifera scutellata*, commonly known as the African honeybee, and its hybrids; *Apis mellifera capensis*, commonly known as the Cape honeybee; and *Apis cerana*, commonly known as the Oriental honeybee.

United States. The States, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

§ 322.2 General requirements for interstate movement and importation.

(a) *Interstate movement.* (1) The following regions of the United States are considered pest-free areas for Varroa mite, tracheal mite, small hive beetle, and African honeybee: Hawaii.

(2) In order to prevent the introduction of Varroa mite, tracheal mite, small hive beetle, and African honeybee into the pest-free areas listed in paragraph (a)(1) of this section, interstate movement of honeybees into those areas is prohibited.

(b) *Importation.* In order to prevent the introduction into the United States of bee diseases and parasites, and undesirable species and subspecies of honeybees:

(1) You may import bees, honeybee germ plasm, and beekeeping byproducts into the United States only in accordance with this part.

(2) You may not import pollen derived from bee colonies and intended for use as bee feed into the United States.

(3)(i) You may not import used beekeeping equipment into the United States, unless that used beekeeping equipment either:

(A) Will be used solely for indoor display purposes and will not come into contact with indigenous bees; or

(B) Consists of bee boards that contain live brood of bees, other than honeybees, from a region listed in § 322.4(c).

(ii) New, unused beekeeping equipment is eligible for importation into the United States if it complies with all applicable regulations in this chapter.

(c) *Movements not in compliance.* (1) Any honeybees, honeybee germ plasm, bees other than honeybees, beekeeping byproducts, or used beekeeping equipment not in compliance with this part that are imported into the United States will be either:

(i) Immediately exported from the United States by you at your expense; or

(ii) Destroyed by us at your expense.

(2) Pending exportation or destruction, we will immediately apply any necessary safeguards to the bees, beekeeping byproducts, or used beekeeping equipment to prevent the introduction of bee diseases and parasites, and undesirable species and subspecies of honeybees into the United States.

§ 322.3 Costs and charges.

We will furnish, without cost, the services of an inspector during normal business hours and at the inspector's places of duty. You will be responsible for all costs and charges arising from inspection outside of normal business hours or away from the inspector's places of duty.[1] You are also responsible for all costs and charges related to any exportation or destruction of shipments, in accordance with § 322.2(c)(1).

[1] Information on costs for services of an inspector are contained in part 354 of this chapter.

Further, if you import bees or germ plasm into a containment facility for research or processing, you will be responsible for all additional costs and charges associated with the importation.

Subpart B—Importation of Adult Honeybees, Honeybee Germ Plasm, and Bees Other Than Honeybees From Approved Regions

§ 322.4 Approved regions.

(a) *Adult honeybees.* The following regions are approved for the importation of adult honeybees into the continental United States (not including Hawaii) under the conditions of this subpart: Australia, Canada, and New Zealand.

(b) *Honeybee germ plasm.* The following regions are approved for the importation of honeybee germ plasm into the United States under the conditions of this subpart: Australia, Bermuda, Canada, France, Great Britain, New Zealand, and Sweden.

(c) *Bees other than honeybees.* The following regions are approved for the importation of bees other than honeybees into the continental United States (not including Hawaii) under the conditions of this subpart: Canada.

(d) If the name of the region from which you want to import adult honeybees, honeybee germ plasm, or bees other than honeybees into the United States does not appear in paragraphs (a), (b), or (c), respectively, of this section, refer to subpart C of this part, ''Importation of Restricted Organisms,'' for requirements.

(e) For information on approving other regions for the importation of adult honeybees, honeybee germ plasm, or bees other than honeybees into the United States, see § 322.12.

§ 322.5 General requirements.

(a) All shipments of bees and honeybee germ plasm imported into the United States under this subpart must be shipped directly to the United States from an approved region.

(b) *Adult honeybees.* (1) You may import adult honeybees under this subpart only from regions listed in § 322.4(a).

(2) The honeybees must be package bees or queens with attending adult bees.

(c) *Honeybee germ plasm.* You may import honeybee germ plasm under this subpart only from regions listed in § 322.4(b).

(d) *Bees other than honeybees.* (1) You may import live adult bees or live brood and essential nest substrate under this subpart only from regions listed in § 322.4(c).

(2) The live bees or brood must belong to one of the following species:

(i) Bumblebees of the species *Bombus impatiens*;

(ii) Bumblebees of the species *Bombus occidentalis*;

(iii) Alfalfa leafcutter bee (*Megachile rotundata*);

(iv) Blue orchard bee (*Osmia lignaria*); or

(v) Horn-faced bee (*Osmia cornifrons*).

(3) If you want to import species of bees other than those listed in paragraph (d)(2) of this section, refer to subpart C of this part, ''Importation of Restricted Organisms,'' for requirements.

§ 322.6 Export certificate.

Each shipment of bees and honeybee germ plasm arriving in the United States from an approved region must be accompanied by an export certificate issued by the appropriate regulatory agency of the national government of the exporting region.

(a) *Adult honeybees.* (1) For adult honeybees, the export certificate must:

(i) Certify that the hives from which the honeybees in the shipment were derived were individually inspected by an official of the regulatory agency no more than 10 days prior to export;

(ii) Identify any diseases, parasites, or undesirable species or subspecies of honeybee found in the hive during that preexport inspection; and

(iii) Certify that the bees in the shipment were produced in the exporting region and are the offspring of bees or semen also produced in the exporting region.

(2) If the export certificate identifies a bee disease or parasite of concern to the United States, including, but not limited to, Thai sacbrood virus, *Tropilaelaps clareae*, and *Euvarroa sinhai*, or an undesirable species or subspecies of honeybee, including, but not limited to, the Cape honeybee (*Apis mellifera capensis*) and the Oriental honeybee (*Apis cerana*), as occurring in the hive from which the shipment was derived, we will refuse the shipment's entry into the United States.

(b) *Honeybee germ plasm.* (1) For honeybee germ plasm, the export certificate must:

(i) Certify that the hives from which the germ plasm in each shipment was derived were individually inspected by an official of the regulatory agency no more than 10 days prior to export;

(ii) Identify any diseases, parasites, or undesirable species or subspecies of honeybee found in the hive during that preexport inspection; and

(iii) Certify that the bees in the hives from which the shipment was derived were produced in the exporting region and are the offspring of bees or semen also produced in the exporting region.

(2) If the export certificate identifies a bee disease or parasite of concern to the United States, including, but not limited to, Thai sacbrood virus, *Tropilaelaps clareae*, and *Euvarroa sinhai*, or an undesirable species or subspecies of honeybee, including, but not limited to, the Cape honeybee (*Apis mellifera capensis*) and the Oriental honeybee (*Apis cerana*), as occurring in the hive from which the shipment was derived, we will refuse the shipment's entry into the United States.

(c) *Bees other than honeybees.* For bees other than honeybees, the export certificate must certify that the bees in the shipment were produced in the exporting region and are the offspring of bees or semen also produced in the exporting region.

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

§ 322.7 Notice of arrival.

(a) At least 10 business days prior to the arrival in the United States of any shipment of bees or honeybee germ plasm imported into the United States under this subpart, you must notify APHIS of the impending arrival. Your notification must include the following information:

(1) Your name, address, and telephone number;

(2) The name and address of the receiving apiary;

(3) The name, address, and telephone number of the producer;

(4) The U.S. port where you expect the shipment to arrive. The port must be staffed by an APHIS inspector (see § 322.11);

(5) The date you expect the shipment to arrive at that U.S. port;

(6) The scientific name(s) of the organisms in the shipment;

(7) A description of the shipment (*i.e.*, package bees, queen bees, nest boxes, etc.); and

(8) The total number of organisms you expect to receive.

(b) You must provide the notification to APHIS through one of the following means:

(1) By mail to the Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; or

(2) By facsimile at (301) 734–8700; or

(3) By electronic mail to *Notification@usda.gov*.

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

§ 322.8 Packaging of shipments.

(a) *Adult honeybees.* All shipments of adult honeybees imported into the United States under this subpart:

(1) Must be packaged to prevent the escape of any bees or bee pests;

(2) Must not include any brood, comb, pollen, or honey; and

(3) May include sugar water or crystallized sugar (*e.g.*, candy) for use as food during transit.

(b) *Bees other than honeybees*—(1) *Adult bees.* All adult bees other than honeybees imported into the United States must be packaged to prevent the escape of any bees or bee pests.

(2) *Live brood.* For live brood of bees other than honeybees, packages:

(i) Must be securely closed;

(ii) May not include any soil, except for that which is present in nest cells that include developing, immature bees;

(iii) May include only packing materials that were grown or produced in the exporting region and that meet all other applicable requirements of this chapter, such as the regulations pertaining to unmanufactured wood in part 319 of this chapter and the plant pest regulations in part 330 of this chapter; and

(iv) May consist of brood housed in new or used bee boards, provided the bee boards meet all applicable requirements of this part.

§ 322.9 Mailed packages.

(a) If you import a package of honeybees, honeybee germ plasm, or bees other than honeybees under this subpart through the mail or through commercial express delivery, you must mark all sides of the outside of that package with the contents of the shipment, *i.e.*, ''Live Bees,'' ''Bee Germ Plasm,'' or ''Live Bee Brood,'' and the name of the exporting region. The marking must be clearly visible using black letters at least 1 inch in height on a white background.

(b) If you import a package of honeybees, honeybee germ plasm, or bees other than honeybees under this subpart through commercial express delivery, you must provide an accurate description of the complete contents of the shipment, *i.e.*, ''Live Bees,'' ''Bee Germ Plasm,'' or ''Live Bee Brood,'' for the shipment's delivery manifest entry.

(c) In addition to the export certificate required in § 322.6, a package of honeybees, honeybee germ plasm, or bees other than honeybees imported under this subpart by commercial express delivery must be accompanied at the time of arrival in the United States by an invoice or packing list accurately indicating the complete contents of the shipment.

§ 322.10 Inspection; refusal of entry.

(a) Shipments of honeybees, honeybee germ plasm, and bees other than honeybees imported into the United States under this subpart will be inspected at the port of entry in the United States for:

(1) Proper documentation (see § 322.6);

(2) Timely notice of arrival (see § 322.7); and

(3) Adequate packaging (see § 322.8).

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

§ 322.11 Ports of entry.

Shipments of honeybees, honeybee germ plasm, and bees other than honeybees imported under this subpart may enter the United States only at a port of entry staffed by an APHIS inspector.[2]

§ 322.12 Risk assessment procedures for approving countries.

(a) The national government of the region wishing to export must request that we perform a risk assessment for the importation into the United States of honeybees, honeybee germ plasm, or bees other than honeybees from that region.

(b) When we receive a request, we will evaluate the science-based risks associated with such importation. Our risk assessment will be based on information provided by the exporting region, information from topical scientific literature, and, if applicable, information we gain from a site visit to the exporting region. The risk assessment will include:

(1) Identification of all bee diseases, including fungi, bacteria, viruses, mycoplasmas, and protozoa, that occur in the exporting region but not in the United States or that are listed as significant for international trade by the Office International des Epizooties (OIE);

(2) Identification of all bee parasites, including mites, that occur in the exporting region but not in the United States or that are listed as significant for international trade by the OIE;

(3) Identification of all species and subspecies of honeybees that occur in the exporting region but not in the United States or that are listed as significant for international trade by the OIE, if applicable;

(4) Identification of all pests of bee culture, such as the small hive beetle, that occur in the exporting region but not in the United States or that are listed as significant for international trade by the OIE;

(5) Evaluation of the probability of establishment, including pathway, entry, colonization, and spread potentials, of any diseases, parasites, undesirable species or subspecies of honeybees, or pests identified in accordance with paragraphs (b)(1), (2), (3), or (4) of this section;

(6) Evaluation of the potential consequences of establishment, including economic, environmental, and perceived social and political effects, of each disease, parasite, undesirable species or subspecies of honeybees, or pest identified in accordance with paragraphs (b)(1), (2), (3), or (4) of this section; and

(7) Consideration of the effectiveness of the regulatory system of the exporting region to control bee diseases, parasites, undesirable species and subspecies of honeybees, and pests that occur there and to prevent occurrences of new bee diseases, parasites, undesirable species and subspecies of honeybees, and pests.

(c) Based on the conclusions of the risk assessment, we will either:

(1) Publish in the **Federal Register** a notice of proposed rulemaking to allow honeybees, honeybee germ plasm, or bees other than honeybees to be imported into the United States from that region; or

(2) Deny the request in writing, stating the specific reasons for that action.

(d) We will publish a notice of availability of all completed risk assessments for public comment.

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

Subpart C—Importation of Restricted Organisms

§ 322.13 General requirements; restricted organisms.

(a) For the purposes of this part, the following are restricted organisms:

(1) Honeybee brood in the comb;

(2) Adult honeybees from any region other than those listed in § 322.4(a);

(3) Honeybee germ plasm from any region other than those listed in § 322.4(b); and

(4) Bees other than honeybees, in any life stage, from any region other than those listed in § 322.4(c) or any species of bee other than those listed in § 322.5(d)(2).

(b) Restricted organisms may be imported into the United States only by

[2] To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by APHIS inspectors, contact Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; toll-free (877) 770–5990; fax (301) 734–8700.

Federal, State, or university researchers for research or experimental purposes and in accordance with this part.

§ 322.14 Documentation; applying for a permit to import a restricted organism.

Any restricted organism imported into the United States must be accompanied by both a permit, in accordance with paragraph (a) of this section, and an invoice or packing list accurately indicating the complete contents of the shipment, in accordance with paragraph (b) of this section.

(a) *Permit.* You must submit a completed application for a permit to import restricted organisms at least 30 days prior to scheduling arrival of those organisms. You may import a restricted organism only if we approve your application and issue you a permit. Our procedures for reviewing permit applications are provided in § 322.15. To apply for a permit, you must supply, either on a completed PPQ Form 526 or in some other written form, the following information: [3]

(1) *Applicant information.* Your name, title, organization, address, telephone number, facsimile number, and electronic mail address (provide all that are applicable). You must also state whether you are a U.S. resident. If you are not a U.S. resident, you must also supply the name, title, organization, address, telephone number, facsimile number, and electronic mail address (provide all that are applicable) of a U.S. resident who will act as a sponsor for the permit application.

(2) *Application type.* New permit, permit renewal, or amendment to existing permit (if a renewal or amendment, provide the current permit number).

(3) *Type of movement.* Select or write ''Import into the United States.''

(4) *Scientific name of organism.* Genus, species, subspecies or strain, and author (if known).

(5) *Type of organism.* Select or write ''Bees and/or bee germ plasm.''

(6) *Taxonomic classification.* Family of restricted organisms.

(7) *Life stage(s).* Semen, preovipositional eggs, embryos, postovipositional eggs, larvae, pupae, or adults. If adult queens, please specify.

(8) Number of shipments.

(9) Number of specimens per shipment.

(10) Is the organism established in the United States?

(11) Is the organism established in the destination State?

(12) Media or species of host material accompanying the organism (*e.g.*, pollen, honey, wax, nesting material).

(13) *Source of organism (include any that apply, and list region of origin).* Supplier (provide supplier's name and address), wild collected, or reared under controlled conditions.

(14) *Method of shipment.* Airmail, express delivery (list company name).

(15) Port(s) of entry.

(16) Approximate date(s) of arrival at the port of entry.

(17) *Destination.* Provide the address of the location where the organism will be received and maintained, including building and room numbers where applicable.

(18) *Intended use (include any that apply).* Select or write ''Scientific Study.''

(19) Has your facility been evaluated by APHIS? If yes, list date(s) of approval. Is your facility approved for the species of bees or bee germ plasm for which you are seeking a permit?

(20) Provide your signature and the date of your signature under the following certification: ''I certify that all statements and entries I have made on this document are true and accurate to the best of my knowledge and belief. I understand that any intentional false statement or misrepresentation made on this document is a violation of law and punishable by a fine of not more than $10,000, or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001).'' If you are required to have a sponsor for your permit application, your sponsor must also sign and date under the same certification.

(b) *Invoice.* Any restricted organism must be accompanied at the time of arrival in the United States by an invoice or packing list accurately indicating the complete contents of the shipment and the exporting region.

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

§ 322.15 APHIS review of permit applications; denial or cancellation of permits.

(a) *Review of permit applications to import restricted organisms*—(1) *Consultation.* During our review of your permit application, we may consult with any Federal officials; appropriate officials of any State, Territory, or other jurisdiction in the United States in charge of research or regulatory programs relative to bees; and any other qualified governmental or private research laboratory, institution, or individual. We will conduct these consultations to gain information on the risks associated with the importation of the restricted organisms.

(2) *Review by destination State.* We will transmit a copy of your permit application, along with our anticipated decision on the application, to the appropriate regulatory official in the destination State for review and recommendation. A State's response, which we will consider before taking final action on the permit application, may take one of the following forms:

(i) The State recommends that we issue the permit;

(ii) The State recommends that we issue the permit with specified additional conditions;

(iii) The State recommends that we deny the permit application and provides scientific, risk-based reasons supporting that recommendation; or

(iv) The State makes no recommendation, thereby concurring with our decision regarding the issuance of the permit.[4]

(b) *Results of review.* After a complete review of your application, we will either:

(1) Issue you a written permit with, if applicable, certain specific conditions listed for the importation of the restricted organisms you applied to import. You must initial each condition on the proposed permit and return the proposed permit conditions to the Permit Unit before we will issue you a signed valid permit; or

(2) Notify you that your application has been denied and provide reasons for the denial.

(c) *Denial of permit applications.* APHIS will deny an application for a permit to import a restricted organism regulated under this subpart when, in its opinion, such movement would involve a danger of dissemination of an exotic bee disease or parasite, or an undesirable species or subspecies of honeybee. Danger of such dissemination may be deemed to exist when:

(1) Existing safeguards against dissemination are inadequate and no adequate safeguards can be arranged; or

(2) The potential for disseminating an exotic bee disease or parasite, or an undesirable species or subspecies of honeybee, with the restricted organism outweighs the probable benefits that could be derived from the proposed movement and use of the restricted organism; or

(3) When you, as a previous permittee, failed to maintain the safeguards or otherwise observe the

[3] Mail your completed application to Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236. A PPQ Form 526 may be obtained by writing to the same address, calling toll-free (877) 770–5990, faxing your request to (301) 734–8700, or downloading the form from *http://www.aphis.usda.gov/ppq/ss/permits/pests/*.

[4] If a State regulatory official does not respond within 20 business days, we will conclude that the State has chosen to make no recommendation regarding the issuance of the permit.

conditions prescribed in a previous permit and have failed to demonstrate your ability or intent to observe them in the future; or

(4) The proposed movement of the restricted organism is adverse to the conduct of an eradication, suppression, control, or regulatory program of APHIS.

(d) *Cancellation of permits.* (1) APHIS may cancel any outstanding permit whenever:

(i) We receive information subsequent to the issuance of the permit of circumstances that would constitute cause for the denial of an application for permit under paragraph (c) of this section; or

(ii) You, as the permittee, fail to maintain the safeguards or otherwise observe the conditions specified in the permit or in any applicable regulations.

(2) Upon cancellation of a permit, you must either:

(i) Surrender all restricted organisms to an APHIS inspector; or

(ii) Destroy all restricted organisms under the supervision of an APHIS inspector.

(e) *Appealing the denial of permit applications or cancellation of permits.* If your permit application has been denied or your permit has been canceled, APHIS will promptly inform you, in writing, of the reasons for the denial or cancellation. You may appeal the decision by writing to the Administrator and providing all of the facts and reasons upon which you are relying to show that your permit application was wrongfully denied or your permit was wrongfully canceled. The Administrator will grant or deny the appeal as promptly as circumstances allow and will state, in writing, the reasons for the decision. If there is a conflict as to any material fact, you may request a hearing to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

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

§ 322.16 Packaging of shipments.

(a) Restricted organisms must be packed in a container or combination of containers that will prevent the escape of the organisms and the leakage of any contained materials. The container must be sufficiently strong to prevent it from rupturing or breaking during shipment.

(b) The outer container must be clearly marked with the contents of the shipment, *i.e.,* either ''Live Bees,'' ''Bee Germ Plasm,'' or ''Live Bee Brood,'' and the name of the region of origin.

(c) Only approved packing materials may be used in a shipment of restricted organisms.

(1) The following materials are approved as packing materials: Absorbent cotton or processed cotton padding free of cottonseed; cages made of processed wood; cellulose materials; excelsior; felt; ground peat (peat moss); paper or paper products; phenolic resin foam; sawdust; sponge rubber; thread waste, twine, or cord; and vermiculite.

(2) Other materials, such as host material for the organism, soil, or other types of packing material, may be included in a container only if identified in the permit application and approved by APHIS on the permit.

§ 322.17 Mailed packages.

(a) If you import a restricted organism through the mail or through commercial express delivery, you must attach a special mailing label (APHIS Form 599), which APHIS will provide with your permit, to the package or container. The mailing label indicates that APHIS has authorized the shipment.

(b) You must address the package containing the restricted organism to the containment facility or apiary identified on the permit (post office boxes are not allowed).

(c) If the restricted organism arrives in the mail without the mailing label described in paragraph (a) of this section or addressed to a containment facility or apiary other than the one listed on the permit, an inspector will refuse to allow the organism to enter the United States.

§ 322.18 Restricted organisms in a commercial vehicle arriving at a land border port in the United States.

(a) If you import a restricted organism through a land border port in the United States by commercial vehicle (*i.e.,* automobile or truck), then the person carrying the restricted organism must present the permit required by § 322.14 and an invoice or packing slip accurately indicating the complete contents of the shipment to the inspector at the land border port.

(b) The restricted organisms must be surrendered at the port of entry and can continue on to the destination identified on the permit only by a bonded carrier (commercial express delivery).

(c) If you fail to present a copy of the permit and an invoice or packing list accurately indicating the complete contents of the shipment at the port of entry, an inspector will refuse the organism's entry to the United States or confiscate and destroy the refused material.

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

§ 322.19 Inspection; refusal of entry.

(a) APHIS may inspect any restricted organism at the time of importation to determine if the organism meets all of the requirements of this part.

(b) If, upon inspection, any shipment fails to meet the requirements of the regulations, that shipment will be refused entry into the United States. In accordance with § 322.2(c), the inspector will offer the shipper the opportunity to immediately export any refused shipments. If the shipper declines to immediately export the shipment, we will destroy the shipment at his or her expense.

§ 322.20 Ports of entry.

A restricted organism may be imported only at a port of entry staffed by an APHIS inspector.[5] After a restricted organism has been cleared for importation at the port of entry, the organism can only be transported by a bonded commercial carrier immediately and directly from the port of entry to the containment facility or apiary identified on the permit. You may open the package containing the restricted organism only within the containment facility or apiary identified on the permit.

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

§ 322.21 Post-entry handling.

(a) Immediately following clearance at the port of entry, a restricted organism must move by a bonded commercial carrier directly to a containment facility or apiary that has been inspected and approved by APHIS.[6] We must inspect and approve the containment facility or apiary before we will issue a permit to import a restricted organism.

(b) *Inspection of premises.* Prior to issuing a permit to import restricted organisms, we will inspect the apiary or containment facility where you intend to contain the restricted organisms. In order to approve the apiary or containment facility, an inspector must determine that adequate safeguards are in place to prevent the release of diseases or parasites of bees, or of undesirable species or strains of honeybees. We will use the following criteria to determine whether adequate safeguards are in place:

[5] To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by APHIS inspectors, contact Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; toll-free (877) 770–5990; fax (301) 734–8700.

[6] For a list of approved facilities, or to arrange to have a facility inspected by APHIS, contact Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; toll-free (877) 770–5990.

(1) *Enclosed containment facilities.* (i) Will the facility's entryways, windows, and other structures, including water, air, and waste handling systems, contain the restricted organisms, parasites and pathogens, and prevent the entry of other organisms and unauthorized visitors?

(ii) Does the facility have operational and procedural safeguards in place to prevent the escape of the restricted organisms, parasites, and pathogens, and to prevent the entry of other organisms and unauthorized visitors?

(iii) Does the facility have a means of inactivating or sterilizing restricted organisms and any breeding materials, pathogens, parasites, containers, or other material?

(2) *Containment apiaries.* (i) Is the apiary located in an area devoid of indigenous bees and sufficiently isolated to prevent contact between indigenous bees and imported restricted organisms? Is the area extending from the apiary to the nearest indigenous bees constantly unsuitable for foraging individuals of the imported restricted organisms?

(ii) Does the apiary have sufficient physical barriers to prevent the entry of unauthorized visitors?

(iii) Does the apiary have operational and procedural safeguards in place to prevent the escape of the restricted organisms, parasites, and pathogens, and to prevent the entry of other organisms and unauthorized visitors?

(iv) Does the apiary have a means of inactivating or sterilizing restricted organisms, and any hives, wax, pathogens, parasites, containers, or other materials?

(3) Containment apiaries for honeybees resulting from germ plasm imported from nonapproved regions.

(i) Does the apiary have sufficient physical barriers to prevent the entry of unauthorized visitors?

(ii) Are there sufficient physical barriers (*e.g.*, excluders) in hives in the apiary to prevent the escape of all adult queen and drone honeybees resulting from the germ plasm?

(iii) Does the apiary have operational and procedural safeguards in place to prevent the escape of all queen and drone honeybees resulting from the germ plasm?

(iv) Does the apiary have a means of destroying colonies of honeybees with undesirable characteristics that may result from imported germ plasm?

(c) *Holding in containment.* (1) If we issue a permit for importing restricted organisms into an approved containment facility or apiary, you may not remove or release the restricted organisms, or the progeny or germ plasm resulting from the restricted organisms, from the apiary or facility without our prior approval.

(2) You must allow us to inspect the apiary or facility and all documents associated with the importation or holding of restricted organisms at any time to determine whether safeguards are being maintained to prevent the release of the restricted organisms, their progeny and germ plasm, parasites, and pathogens.

(3) You must inform us immediately, but no later than 24 hours after detection, if restricted organisms escape from the facility

(d) *Release from containment apiary or facility.* (1) After rearing the restricted organisms in an approved containment facility or apiary through at least 4 months of active reproduction with no evidence of nonindigenous parasites or pathogens or of undesirable characteristics, you may submit a request to us for the release of the bees. The request must include:

(i) Inspection protocols;

(ii) Inspection frequencies;

(iii) Names and titles of inspectors;

(iv) Complete information, including laboratory reports, on detection of diseases and parasites in the population;

(v) Complete notes and observations on behavior, such as aggressiveness and swarming; and

(vi) Any other information or data relating to bee diseases, parasites, or adverse species or subspecies.

(2) Mail your request for release to the Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, or fax to (301) 734–8700.

(3) When we receive a complete request for release from containment, we will evaluate the request and determine whether the bees may be released. Our evaluation may include an environmental assessment or environmental impact statement prepared in accordance with the National Environmental Policy Act. We may conduct an additional inspection of the bees during our evaluation of the request. You will receive a written statement as soon as circumstances allow that approves or denies your request for release of the bees.

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

Subpart D—Transit of Restricted Organisms Through the United States

§ 322.22 General requirements.

(a) You may transit restricted organisms from any region through the United States to another region only in accordance with this part. For a list of restricted organisms, see § 322.13(a).

(b) You may ship restricted organisms only aboard aircraft to the United States for transit to another country.

(c) You may transload a shipment of restricted organisms only once during the shipment's entire transit through the United States and only at an airport in the continental United States. You may not transload restricted organisms in Hawaii. In Hawaii, the restricted organisms must remain on, and depart for another destination aboard, the same aircraft on which the shipment arrived at the Hawaiian airport.

§ 322.23 Documentation.

Each shipment of restricted organisms transiting the United States must be accompanied by a document issued by the appropriate regulatory authority of the national government of the region of origin stating that the shipment has been inspected and determined to meet the packaging requirements in § 322.24.

§ 322.24 Packaging of transit shipments.

(a) Restricted organisms transiting the United States must be packaged in securely closed and completely enclosed containers that prevent the escape of organisms and the leakage of any contained materials. The container must be sufficiently strong and durable to prevent it from rupturing or breaking during shipment.

(b) In addition to the requirements in paragraph (a) of this section, each pallet of cages containing honeybees transiting the United States must be covered by an escape-proof net that is secured to the pallet so that no honeybees can escape from underneath the net.

(c) The outside of the package must be clearly marked with the contents of the transit shipment, *i.e.*, either ''Live Bees,'' ''Bee Germ Plasm,'' or ''Live Bee Brood,'' and the name of the exporting region.

§ 322.25 Notice of arrival.

At least 2 business days prior to the expected date of arrival of restricted organisms at a port in the continental United States for in-transit movement, you or your shipper must contact the port to give the following information:

(a) The name of each U.S. airport where the shipment will arrive;

(b) The name of the U.S. airport where the shipment will be transloaded (if applicable);

(c) The date of the shipment's arrival at each U.S. airport;

(d) The date of the shipment's departure from each U.S. airport;

(e) The names, phone numbers, and addresses of both the shipper and receiver;

(f) The number of units in the shipment (*i.e.*, number of queens or number of cages of package bees); and

(g) The name of the airline carrying the shipment.

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

§ 322.26 Inspection and handling.

(a) All shipments of restricted organisms transiting the United States are subject to inspection at the port in the United States for compliance with this part. If, upon inspection, a transit shipment of restricted articles is found not to meet the requirements of this part, we will destroy the shipment at your expense.

(b) *Transloading*—(1) *Adult bees.* You may transload adult bees from one aircraft to another aircraft at the port of arrival in the United States only under the supervision of an inspector. If the adult bees cannot be transloaded immediately to the subsequent flight, you must store them within a completely enclosed building. Adult bees may not be transloaded from an aircraft to ground transportation for subsequent movement through the United States.

(2) *Bee germ plasm.* You may transload bee germ plasm from one aircraft to another at the port of arrival in the United States only under the supervision of an inspector.

§ 322.27 Eligible ports for transit shipments.

You may transit restricted organisms only through a port of entry staffed by an APHIS inspector.[7]

Subpart E—Importation and Transit of Restricted Articles

§ 322.28 General requirements; restricted articles.

(a) The following articles from any region are restricted articles:

(1) Dead bees of any genus;

(2) Beeswax for beekeeping; and

(3) Honey for bee feed.

(b) Restricted articles may only be imported into or transit the United States in accordance with this part.

§ 322.29 Dead bees.

(a) Dead bees imported into or transiting the United States must be either:

(1) Immersed in a solution containing at least 70 percent alcohol or a suitable fixative for genetic research;

(2) Immersed in liquid nitrogen; or

(3) Pinned and dried in the manner of scientific specimens.

(b) Dead bees are subject to inspection at the port of entry in the United States to confirm that the requirements of paragraph (a) of this section have been met.

§ 322.30 Export certificate.

Each shipment of restricted articles, except for dead bees, imported into or transiting the United States must be accompanied by an export certificate issued by the appropriate regulatory agency of the national government of the exporting region. The export certificate must state that the articles in the shipment have been treated as follows:

(a) *Beeswax.* Must have been liquefied, and slumgum and honey must be removed.

(b) *Honey for bee feed.* Heated to 212 °F (100 °C) for 30 minutes.

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

§ 322.31 Notice of arrival.

(a) At least 10 business days prior to the arrival in the United States of any shipment of restricted articles, you must notify APHIS of the impending arrival. Your notification must include the following information:

(1) Your name, address, and telephone number;

(2) The name and address of the recipient of the restricted articles;

(3) The name, address, and telephone number of the producer;

(4) The date you expect to receive the shipment;

(5) A description of the contents of the shipment (*i.e.*, dead bees, honey for bee feed, etc.); and

(6) The total number of restricted articles you expect to receive.

(b) You must provide the notification to APHIS through one of the following means:

(1) By mail to the Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; or

(2) By facsimile at (301) 734–8700; or

(3) By electronic mail to *Notification@usda.gov.*

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

§ 322.32 Mailed packages.

(a) If you import a restricted article through the mail or through commercial express delivery, you must mark all sides of the outside of that package with the contents of the shipment and the name of the exporting region. The marking must be clearly visible using black letters at least 1 inch in height on a white background.

(b) If you import a restricted article through commercial express delivery, you must provide an accurate description of the complete contents of the shipment for the shipment's delivery manifest entry.

(c) In addition to the export certificate required in § 322.30 (if applicable), a restricted article that is imported by mail or commercial express delivery must be accompanied by an invoice or packing list accurately indicating the complete contents of the shipment.

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

§ 322.33 Restricted articles in a commercial bonded vehicle arriving at a land border port in the United States.

If you import a restricted article through a land border port in the United States by commercial vehicle (*i.e.*, automobile or truck), then the person carrying the package containing the restricted article or the driver of the vehicle must present the export certificate required by § 322.30 (if applicable) and an invoice or packing slip accurately indicating the complete contents of the shipment to the inspector at the land border port.

§ 322.34 Inspection; refusal of entry.

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

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

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

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

§ 322.35 Ports of entry.

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

[7] To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by APHIS inspectors, contact Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; toll-free (877) 770–5990; fax (301) 734–8700.

Done in Washington, DC, this 14th day of October 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–23416 Filed 10–20–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV04–985–2 IFR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2004–2005 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year by increasing the salable quantity from 773,474 pounds to 1,095,689 pounds, and the allotment percentage from 36 percent to 51 percent. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, unanimously recommended this rule to avoid extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

DATES: Effective June 1, 2004, through May 31, 2005; comments received by December 20, 2004 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year, which ends on May 31, 2005. Specifically, this rule increases the salable quantity from 773,474 pounds to 1,095,689 pounds, and the allotment percentage from 36 percent to 51 percent for Native spearmint oil for the 2004–2005 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 2004–2005 marketing year were recommended by the Committee at its October 8, 2003, meeting. The Committee recommended salable quantities of 766,880 pounds and 773,474 pounds, and allotment percentages of 40 percent and 36 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the **Federal Register** on January 23, 2004 (69 FR 3272). Comments on the proposed rule were solicited from interested persons until February 23, 2004. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 2004–2005 marketing year was published in the **Federal Register** on March 22, 2004 (69 FR 13213).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, at its September 13, 2004, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 2004–2005 marketing year be increased by 12 percent from 36 percent to 48 percent. The Committee held another meeting on October 6, 2004, where, based on an unanticipated increase in demand, they unanimously recommended that the allotment percentage for Native spearmint oil for the 2004–2005 marketing year be increased by an additional 3 percent from 48 percent to 51 percent. Taking into consideration the following discussion on adjustments to the Native