



This document is scheduled to be published in the Federal Register on 06/21/2013 and available online at <http://federalregister.gov/a/2013-14638>, and on FDsys.gov

BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 322, and 360

[Docket No. APHIS-2011-0085]

RIN 0579-AD76

Consolidation of Permit Procedures; Denial and Revocation of Permits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to consolidate the regulations concerning the issuance of permits for the importation and interstate movement of a wide variety of regulated plants, plant products, and other articles. We would also make corresponding changes to the regulations concerning permits for the importation and interstate movement of noxious weeds and the importation of honeybees and other beekeeping articles. We are also proposing to include new provisions in our regulations for the denial of a permit and the revocation of a permit once issued. These changes would make our permit procedures more transparent and easier to use, allow us to evaluate a permit application more quickly and thoroughly, and help us hold permittees accountable for complying with permit conditions.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0085-0001>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2011-0085, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0085> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Phillips, Senior Regulatory Policy Specialist, Regulatory Compliance and Coordination, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2114.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection Act, as amended, (PPA, 7 U.S.C. 7701 et seq.) states that it is the responsibility of the Secretary of Agriculture to facilitate exports, imports, and interstate commerce of agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce the risk of dissemination of plant pests or noxious weeds that could constitute a threat to crops and other plants or plant products and burden interstate or foreign commerce. The Secretary may prohibit or restrict the importation,

entry, exportation, or movement in interstate commerce of any plant, plant product, noxious weed, or article if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States or the dissemination of a plant pest or noxious weed within the United States.

To implement these prohibitions and restrictions, the PPA further provides that the Secretary may issue regulations, including those that require that a permit be obtained for plants, plant products, noxious weeds, or other regulated articles prior to their importation or movement in interstate commerce. The Secretary has delegated the authority provided by the PPA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations issued under the authority of the PPA are administered and enforced by APHIS' Plant Protection and Quarantine program (PPQ).

Requiring a written permit for the importation or interstate movement of plants, plant products, noxious weeds, or other regulated articles reduces the risk of the introduction or dissemination of a plant pest or noxious weed in the United States in several ways.

A permit informs applicants of the requirements and conditions for importation or interstate movement of regulated articles that we have determined are necessary to mitigate the risk of introducing or disseminating a plant pest or noxious weed. Requiring a written permit also allows APHIS to hold permittees accountable for complying with permit conditions and to specify the plant products allowed into the United States or allowed to move interstate. A permit prescribes the binding conditions that the applicant for a permit, and the permittee, must adhere to under the permit and the pertinent regulations. The information contained in an application for a permit must also provide for clear and continuous accountability for the importation or movement.

The regulations contained in 7 CFR part 319, Foreign Quarantine Notices, prohibit or restrict the importation into the United States of certain plants, roots, bulbs, seeds, or other plant products to prevent plant pests and noxious weeds from being introduced and spread within the United States. The restricted or prohibited plant products include plants for planting, cut flowers, fruits and vegetables, foreign cotton and covers, sugarcane, citrus, corn and related plants, rice, wheat, logs and other unmanufactured wood articles, packing materials, and coffee.

The regulations in 7 CFR part 322 prohibit or restrict the importation of honeybees and honeybee semen in order to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species.

The regulations in 7 CFR part 360 restrict the importation and interstate movement of those plants that are designated as noxious weeds.

Each of the parts listed above provides the requirements for permits that are necessary to comply with the regulations of that part. Those parts are not, however, always consistent in their requirements for obtaining a permit, the basis upon which we may deny or revoke a permit, or how such a denial or revocation may be appealed.

These inconsistencies have resulted in confusion for applicants for a permit concerning our permit procedures and difficulties for APHIS in providing the appropriate guidance concerning the regulations. Additionally, the lack of consistency in our permit procedures has resulted in difficulties with the enforcement of our regulations. There have been instances of applicants for a permit providing false or fraudulent information. In other instances, permittees have not complied with requirements for using a permit. Permittees must comply with all requirements in the applicable regulations and with all permit conditions contained in the permit, and with applicable administrative instructions. Administrative instructions are published

guidance stating how to comply with the regulations with regard to a particular commodity or situation, and are incorporated into the regulations if they are of general applicability. See, for example, 7 CFR 319.24a, “Administrative instructions relating to entry of corn into Guam.”

In order to reduce the risk of the introduction or dissemination of a plant pest or noxious weed into or within the United States, we intend to strengthen and harmonize the requirements for a permit for restricted plants, plant products, and other articles regulated under the PPA in parts 319, 322, and 360.

Specifically, we are proposing to establish a new subpart in part 319 entitled “Permits: Application, Issuance, Denial, and Revocation,” which would include §§ 319.7 through 319.7-5 and would serve as generally applicable requirements in part 319 for obtaining a permit to import or move interstate plants or plant products. The requirements contained in the new subpart would provide applicants for permits with more detailed information regarding the process for applying for a permit and indicate the type of information we would require in a permit application. We would also make consistent and clear the provisions for how we will approve, deny, or revoke a permit. We would also apply the new provisions, as appropriate, to parts 322 and 360.

We anticipate that these changes to the regulations will make our permit procedures more transparent and easier to use, allow us to evaluate a permit application more quickly and thoroughly, and provide greater control and accountability for the permit process.

These proposed changes, and the provisions of the proposed new subpart, are discussed in further detail directly below.

Definitions

Section 319.7 would define terms we propose to use in the permit regulations. Some of the terms and definitions we are proposing for § 319.7 are derived from the definitions of these terms in the PPA. We are proposing to use these definitions in order to ensure that the regulations are consistent with the PPA. Those definitions are listed below:

- Article. Any material or tangible objects that could harbor plant pests or noxious weeds.
- Enter, entry. To move into, or the act of movement into, the commerce of the United States.
- Import, importation. To move into, or the act of movement into, the territorial limits of the United States.
- Means of conveyance. Any personal property used for or intended for use for the movement of any other personal property.
- Move. To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive to carry, enter, import, mail, ship, or transport; to release into the environment; or to allow any of the activities described in this definition.
- Permit. A written authorization, including by electronic methods, to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Administrator.
- Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

- Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.
- Plant pest. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing.
- Plant product. Any flower, fruit, vegetable, root, bulb, seed, or other plant part that is not included in the definition of plant, or any manufactured or processed plant or plant part.
- State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.
- United States. All of the States.

Other definitions we are proposing for § 319.7 are based on definitions in other parts of our regulations in 7 CFR chapter III. These definitions are listed below:

- Administrative instructions. Published documents related to the enforcement of 7 CFR part 319 and issued under authority thereof by the Administrator.
- Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any employee of the United States Department of Agriculture delegated to act in his or her stead.
- Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

- Consignment. A quantity of plants, plant products, and/or other articles being moved from one country to another authorized, when required, by a single permit. A consignment may be composed of one or more commodities or lots.
- Country of origin. The country where the plants, or plants from which the plant products are derived or were grown or where the non-plant articles were produced.
- Inspector. Any individual authorized by the Administrator of the Animal and Plant Health Inspection Service or the Commissioner of the Bureau of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in part 319.
- Lot. All the regulated articles on a single means of conveyance that are derived from the same species of plant or are the same type of non-plant article and were subjected to the same treatments prior to importation, and that are consigned to the same person.
- Port of entry. A port at which a specified shipment or means of conveyance is accepted for entry, or admitted without entry into the United States for transit purposes.
- PPQ. The Plant Protection and Quarantine program, Animal and Plant Health Inspection Service.
- Regulated article. Any material or tangible object regulated by 7 CFR part 319 for entry into the United States or interstate movement.
- Soil. The unconsolidated material from the earth's surface that consists of rock and mineral particles mixed with organic material and that supports or is capable of supporting biotic communities.
- Treatment. A procedure approved by the Administrator for neutralizing infestations or infections of plant pests or plant diseases, such as fumigation, application of chemicals or dry or moist heat, or processing, utilization, or storage.

Other definitions we are proposing for § 319.7 are new to the regulations or are slightly different or expanded from current definitions. These definitions are discussed below.

To provide a clear framework for distinguishing the stages involved in issuing permits for the importation and interstate movement of regulated articles we would define two terms. These terms are applicant and permittee.

We would define an applicant as a person at least 18 years of age who, on behalf of him or herself or another person, submits an application for a permit to import into the United States or move interstate a regulated article in accordance with part 319. A permittee would be defined as a person who on behalf of him or herself or another person, is legally the importer of an article, meets the requirements of § 319.7-2(f), and is responsible for compliance with the conditions for the importation that is the subject of a permit issued in accordance with part 319. It is important that the permittee be the importer of the article because the act of importing an article contrary to the regulations is specifically identified as a violation of law.

In § 319.7-1, we would make consistent the information required in an application for a permit for the articles regulated by part 319. We would require applicants to state the intended use of the regulated article and we would define intended use as the purpose for the importation of the regulated article, to include, but not be limited to, consumption, propagation, or research purposes. We would also require that the proposed port of first arrival be provided, and we would define port of first arrival as the area, such as a seaport, airport, or land border, where a person or means of conveyance first arrives in the United States, and where inspection of regulated articles may be carried out by inspectors.

We would clarify throughout part 319 that obtaining a permit does not guarantee permission to import a consignment of regulated articles, but that an inspector at the port may

withhold permission pending a determination regarding whether remedial measures are necessary pursuant to the PPA with respect to the regulated article. We would also define oral authorization as verbal permission to import that may be granted by an inspector at the port of entry.

Applying for a Permit

The regulations in proposed § 319.7-1 would set out the specific information a permit application must contain, how we would handle a shipment that arrives at a port before the permittee has received the permit, and how we would provide for oral authorizations at the port of entry.

Paragraph (a) would provide that a person who wishes to import regulated articles into the United States must apply for a permit, unless the regulated articles are not subject to a requirement that a permit be issued prior to a consignment's arrival. This standard would continue to allow importation of articles that the regulations currently allow to enter without being accompanied by a permit (e.g., most lots of 12 or fewer plants for planting under § 319.37-3, certain log and lumber articles authorized entry under the general permit in § 319.40-3, or fruits and vegetables from Canada entering under the general permit in § 319.56-10).

Proposed paragraph (a) would also set out the requirements for an applicant to obtain a permit. Under this paragraph, an applicant for a permit to import regulated articles into the United States in accordance with part 319 would have to be capable of acting in the capacity of the permittee, or must designate a permittee for the permit, should it be issued. The duties of a permittee are discussed later in this document.

Section 424(c) of the PPA (7 U.S.C. 7734(c)) provides that, for the purposes of the PPA, the act, omission, or failure of any officer, agent, or person acting for or employed by another person within the scope of his or her employment or office shall be deemed also to be the act, omission, or failure of the other person. We would make this responsibility clear by building into the definition of applicant that the application may be for a permit on behalf of him or herself or another person to act as permittee. We would also require that the applicant be at least 18 years of age.

Paragraph (b) would provide applicants with information regarding how to obtain and submit an application for a permit. It would state that permit applications must be submitted by the applicant in writing or electronically through one of the means listed at http://www.aphis.usda.gov/plant_health/permits/index.shtml in advance of the action(s) proposed on the permit application. That Web page would specify that persons may apply for a permit via the Internet through APHIS' secure site for online permit applications, and would provide a link to that portal. It would also provide that a person may submit a permit application by faxing the application to APHIS, and would specify the appropriate fax number. Additionally, it would state that an application may be obtained by calling PPQ at the number provided. Finally, it would provide that a person may submit a permit application by mailing it to APHIS at the address provided.

Paragraph (c) would list the information that every permit application must contain, and paragraph (d) would list other information APHIS may require from some applicants depending on the specific nature of the articles in their shipments. Currently, in the various subparts of part 319, permit applications require certain information in all cases (nature and origin of the shipment, contact information for the applicant, etc.), but there is substantial variation in the

description of requirements. Much of the variation is not significant but simply results from the fact that the various subparts were written at different times over a span of 50 years. In a few cases, the variation results from a need to have additional information to evaluate or control the risks associated with specific types of imports or pests. Table 1 below summarizes how the current subparts of part 319 address the information required for permit applications.

Table 1.—Comparison of information required for permit applications

§ 319.8 <u>et seq.</u> Subpart-- Foreign Cotton and Covers	§319.24 <u>et seq.</u> Subpart-- Corn Diseases	§ 319.37 <u>et seq.</u> Subpart--Plants For Planting	§ 319.40 <u>et seq.</u> Subpart--Logs, Lumber, and Other Wood Articles	§ 319.41 <u>et seq.</u> Subpart-- Indian Corn or Maize, Broomcorn, and Related Plants	§ 319.55 <u>et seq.</u> Subpart-- Rice	§ 319.56 <u>et seq.</u> Subpart-- Fruits and Vegetables	§ 319.75 <u>et seq.</u> Subpart--Khapra Beetle
<ul style="list-style-type: none"> • Name and address of the importer • Country from which such material is to be imported • Kind of cotton or covers it is desired to import • Approximate quantity • Proposed port of entry 	<ul style="list-style-type: none"> • Name and address of the exporter • Country and locality where grown • Port of departure • Proposed port of entry • Name and address of the importer or of the broker in the United States to whom the 	<ul style="list-style-type: none"> • Name, address, and telephone number of the importer • Approximate quantity and kinds (botanical designations) of articles intended to be imported • Country(ies) or locality(ies) where grown • Intended United States port of entry • Means of transportation, e.g., mail, airmail, express, air express, 	<ul style="list-style-type: none"> • Name and address of the applicant and, if the applicant's address is not within the United States, of an agent in the United States whom the applicant names for acceptance of service of process • Statement certifying the applicant as the importer of record • Specific type of regulated article to be imported, including the genus and species name of the tree from which the regulated article was derived • Country, and locality if known, 	<ul style="list-style-type: none"> • Name and address of the exporter • Country and locality where grown • Port of arrival • Name and address of the importer in the United States to whom the permit should be sent 	<ul style="list-style-type: none"> • Name and address of the importer in the United States to whom the permit should be sent, if other than the applicant • Locality where the desired material has been grown • Port of first arrival 	<ul style="list-style-type: none"> • Name and address of the importer in the United States • Country or locality of origin of the fruits or vegetables • Anticipated port of first arrival • Identity (scientific name preferred) and quantity of the fruit or vegetable 	<ul style="list-style-type: none"> • Name, address, and telephone number of the importer • Approximate quantity and kinds of articles intended to be imported • Country or locality of origin • Country(ies) or locality(ies) where it is intended to be off-loaded prior to arrival in the United States • Intended U.S. port of entry

	<p>permit should be sent</p>	<p>freight, airfreight, or baggage</p> <ul style="list-style-type: none"> • Expected date of arrival 	<p>where the tree from which the regulated article was derived was harvested</p> <ul style="list-style-type: none"> • Quantity of the regulated article to be imported • Description of any processing, treatment or handling to be performed prior to importation, including the location where any processing or treatment was or will be performed and the names and dosage of any chemicals employed in treatments • Description of any processing, treatment, or handling intended to be performed following importation, including the location where any processing or treatment will be performed and the names and dosage of any chemicals employed in 				<ul style="list-style-type: none"> • Means of transportation • Expected date of arrival
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			<p>treatments</p> <ul style="list-style-type: none"> • Whether the regulated article will or will not be imported in a sealed container or in a hold • Means of conveyance to be used • Intended port of first arrival in the United, and any subsequent ports in the United States at which regulated articles may be unloaded • Destination and general intended use of the regulated article 				
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Table 2 below describes the unified permit application information requirements that we are proposing to replace the varied requirements in table 1. It includes both specific information we would require for all permit applications and additional information that we may sometimes require based on the nature of the article imported pursuant to the requested permit.

Table 2.—Proposed permit application information requirements

Information for all permits (proposed § 319.7-1(c))	Additional information that may be required (proposed § 319.7-1(d))
<ul style="list-style-type: none"> • Legal name, address, and contact information of the applicant and of the permittee, if different from the applicant • Specific type of regulated article (common and scientific names, if applicable) • Country of origin • Intended use of the regulated article • Intended port of first arrival • A description of any processing, treatment, or handling of the regulated article to be performed prior to or following importation, including the location where any processing or treatment was or will be performed and the names and dosage of any chemical employed in treatments of the regulated article 	<ul style="list-style-type: none"> • Means of conveyance • Quantity of the regulated article • Estimated date of arrival • Name, address, and contact information of any broker or subsequent custodian of the regulated article • Exporting country from which the article is to be moved, when not the country of origin • Any other information determined to be necessary by the Administrator to inform the decision to issue the permit

The information we are proposing to require for all applications would provide us with the means to contact and track applicants and evaluate, for most cases, the risk posed by the proposed importation. This evaluation takes into account the type of article (to consider what pests it may host) and the country of origin (to consider what pests are found there). The intended use of the article is also often relevant, for example, if it is intended for near-term consumption or processing destructive to pests. The intended port of arrival is important

information both for workload planning and to consider whether any pests of concern could thrive or spread in that port's climate. Finally, the description of any processing, treatment, or handling of the article allows us to consider whether pests would be destroyed by such processes.

The second column of table 2 lists information that APHIS may require before issuing specific permits to make a fully informed decision concerning the risks of disseminating plant pests or noxious weeds for a particular importation. This represents information that APHIS may sometimes require either to properly assess the risk associated with the proposed importation or information relevant to operational planning. For example, the identity of countries that the consignment is shipped through may be relevant to risk in cases where certain types of consignments can easily become infested with pests not present in the country of origin. In other cases the quantity of a regulated article is relevant when gauging whether treatment facilities at the port of arrival are of adequate size, and the estimated date of arrival is relevant when port facilities are scheduled for renovation or particularly busy periods. This type of additional information would be obtained from the applicant either through automatic prompts in the ePermits system triggered by applicant responses, or in cases where ePermits is not used, by APHIS contacting the applicant after receiving the application.

Importantly, we propose to indicate in paragraph (d) of § 319.7-1 that APHIS may require from an applicant any other information determined necessary by the Administrator to inform the decision to issue the permit or to safely manage its entry at the port. Such information may sometimes be required from an applicant even after issuance of a permit, for example, when additional transportation requirements suddenly become necessary. These are situations where clearance of a consignment at the scheduled port of first arrival is impossible and the consignment is directed to move from the arrival port environs to another location for

final disposition. In such cases, APHIS may need more information to assess the pest risk and decide whether safeguards are adequate and to contact the destination port about safeguards there while the off-loaded consignment is awaiting transshipment.

Paragraph (e) of § 319.7-1 would provide that an application for a permit to import regulated articles into the United States must be submitted at least 30 days prior to arrival of the article at the port of entry; however, if, through no fault of the permittee, a consignment should arrive at a U.S. port before a permit is received, we would provide that the consignment may be held, under suitable safeguards prescribed by the inspector, in custody at the risk and expense of the permittee pending issuance of a permit or authorization from APHIS for entry.

We would also provide for oral authorizations in paragraph (e). As discussed above, an oral authorization would be defined as verbal permission to import that may be granted by an inspector at the port of entry. We are proposing that an oral authorization could be granted by an inspector at the port of entry for a shipment or a consignment, provided all applicable entry requirements are met, proof of application for a written permit is provided to the inspector, and PPQ verifies that the application for a written permit has been received and that PPQ intends to issue the permit.

The oral authorization procedure would replace current provisions in part 319 of the regulations for oral permits. Some sections of part 319 allow oral permits to be issued at the sole discretion of an inspector, without requiring prior submission of a permit application. While APHIS has operational practices in effect to track when oral permits are authorized and what they cover, there is no corresponding requirement for importers to keep track of when they receive oral permission and what it covers, which complicates compliance audits and enforcement actions. Due to these factors, we have determined that oral permits do not provide a

reliable means of verifying that a permittee was aware of permitting conditions at the time he or she was issued the permit. Because the proposed oral authorization procedure includes a requirement that an application for a written permit must be underway before an oral authorization is issued, it would provide a link between oral authorizations and documentation. The written application associated with the oral authorization also includes acknowledgment and acceptance of permit conditions that may be assigned by APHIS, which also strengthens the oral authorization system compared to the old oral permits system for articles subject to part 319.

Issuance of Permits and Labels

Section 319.7-2 would contain the provisions for the issuance of permits and labels. In paragraph (a) of this section, we would provide that, when we receive an application for a permit, we will issue a permit that prescribes the applicable conditions for importation if, after review of the application, the Administrator determines that the regulated article is eligible to be imported into the United States under those specific conditions. A copy of the permit would be provided to the permittee. The permit would only be valid for the time period indicated on the permit. In addition to listing the applicable conditions of entry, the permit would also specify the port of entry and, when needed, allowed ports of first arrival. (This may be needed, for example, for air parcel post deliveries that arrive in the United States and then move by surface transportation, usually by a bonded carrier, to another destination for entry. Such shipments must be cleared at a port of first arrival that has a U.S. Department of Agriculture plant inspection station.)

Paragraph (b) would require that an applicant for a permit for the importation of regulated articles into the United States designate the person who will be named as the permittee upon the permit's issuance. As discussed above, the applicant and the permittee may be the same person.

As noted above, the PPA provides that the act, omission, or failure of any officer, agent or person acting for or employed by another person within the scope of his or her employment or office shall be deemed also to be the act, omission, or failure of the other person. We would include this standard in paragraph (c) to make it clear that responsibility for violating a permit condition applies to the permittee and is not limited to just the person who commits the violation, if that person is acting as an agent for the applicant or permittee.

Paragraph (d) would provide that failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of relevant permits (i.e., the permit for which a condition was violated, or any valid permit that the permittee altered to extend its scope), denial of any future applications for permits, and other remedial actions ordered by an inspector and civil or criminal penalties for the permittee, as authorized by the PPA.

Paragraph (e) would provide that the permittee remains responsible for the consignment regardless of any delegation to a subsequent custodian of the importation. Such subsequent custodians include entities such as brokers or transporters.

Paragraph (f) would include requirements for the permittee. These requirements are necessary because we must be able to clearly identify and when necessary contact the person legally responsible for the importation or movement that is the subject of the permit. If the permittee is an individual, he or she would be required, during any periods when articles are being imported or moved interstate under the permit, to maintain and be physically present during normal business hours at an address within the United States specified on the permit.

If the permittee is a corporation, institution, association or other legal entity, the legal entity would have to maintain an address or a business office in the United States with a designated individual for service of process.

Proposed paragraph (f) would also require that the permittee serve as the contact for the purpose of communications associated with the movement of the regulated article for the duration of the permit, and ensure compliance with the applicable regulatory requirements and permit conditions associated with the movement of the regulated article for the duration of the permit. The permittee would also be required to provide written or electronic acknowledgment and acceptance of permit conditions and acknowledge that failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of any future applications for permits, and other remedial actions under the PPA. We would require that the permittee comply with all conditions of the permit for the entirety of its prescribed duration. The permittee would also be required to inform the PPQ Permit Unit of a change in contact information for the permittee within 10 business days of such change.

Paragraph (g) would provide that the importation of regulated articles may only proceed, even if a permit is issued, if all applicable requirements of the permit or any other documents or instructions issued by APHIS are met. Such documents may include APHIS administrative instructions, compliance agreements, and preclearance documents. While APHIS tries to ensure that permittees are fully informed at the time of permit issuance as to exactly what APHIS requirements will apply to their shipments when they arrive, sometimes this is not possible. There are various reasons for this, ranging from the minor (a clerical or data entry error in the

permit) to the substantial (new data demonstrating existence of a pest in an area or on a commodity where it was not previously known). To directly inform permittees, each permit contains a statement that all requirements are subject to change at any time during the duration of the permit, and refers permittees to PPQ Port Program Manuals at http://www.aphis.usda.gov/import_export/plants/manuals/ports/index.shtml for current import requirements for commodities. When it is possible and there is time to do so, APHIS will amend a permit and inform the permittee before shipments arrive that will be subject to new or revised requirements. When there is not time to do this or a large number of permits are affected and they all cannot be amended quickly, the new requirements are also publicized using methods such as press releases and the PPQ Stakeholder Registry. Also, when new pest or other information makes it necessary to prohibit commodities that were previously allowed entry, a Federal Order¹ is usually issued and widely distributed by APHIS.

APHIS issues labels for consignments of some imported articles to expedite clearance of approved imports, e.g., we may issue labels to be applied to fruit packed under approved conditions at an approved packinghouse overseas. Paragraph (h) would add provisions for the labeling of regulated articles to be imported under a permit issued in accordance with part 319. It would state that labels with information about the shipment's nature, origin, movement conditions, or other matters relevant to the permit may be issued to the importer for the importation of regulated articles and will indicate that the importation is authorized under the conditions specified in the permit. The quantity of labels will be sufficient for the importer to affix one to the outer packaging of each parcel. If APHIS has required and issued labels for an

¹ A Federal Order is a document issued by APHIS, typically in response to an immediate need, when the Administrator of APHIS considers it necessary to take regulatory action to protect agriculture or prevent the entry and establishment into the United States of a pest or disease. Federal Orders are effective immediately under the regulatory authority provided by the Plant Protection Act, as amended, Section 412(a), 7 U.S.C. 7712(a). Federal Orders will remain in effect until they are revised by another Federal Order or by rulemaking, or are withdrawn.

importation by either regulations in part 319 or specific permit conditions, importations without the required labels will be refused entry into the United States.

Even if a permit has been issued for the importation of a regulated article, under the provisions of paragraph (i) the regulated article may be imported only if an inspector at the port of entry determines that, based on the findings of the inspection, no remedial measures pursuant to the PPA are necessary. Pursuant to the PPA, an inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, and other articles in accordance with sections 414, 421, and 434 of the PPA (7 U.S.C. 7714, 7731, and 7754).

Paragraph (j) of proposed § 319.7-2 would provide that a permit application may be withdrawn at the request of the applicant prior to the issuance of the permit. A permit could be canceled after issuance at the request of the permittee under proposed paragraph (k), and paragraph (l) would provide that a permit may be amended if the Administrator finds after issuance that the permit was incomplete or contained factual errors.

Denial of Permits

Section 319.7-3 would contain the regulations by which we could deny a permit to import regulated articles into the United States under this part.

The Administrator may deny an application for a permit under the provisions of proposed paragraph (a). A denial, including the reason for the denial, would be provided in writing, including by electronic methods, to the applicant as promptly as circumstances permit. We would provide that the denial of a permit may be appealed in accordance with § 319.7-5.

Paragraph (b) would contain the conditions under which the Administrator may deny a permit to import regulated articles. These conditions would include risks posed both by the applicant and by the article.

We propose to provide that a permit may be denied if APHIS determines that an applicant is not likely to abide by permit conditions. Factors that may lead to such a determination would include, but not be limited to, the following.

- The applicant, or another legal entity in which the applicant has a substantial interest, has not complied with any permit that was previously issued by APHIS;
- APHIS determines that issuing the permit would circumvent any order revoking or denying a permit under the Act;
- APHIS determines that the applicant has previously failed to comply with any APHIS regulation;
- The applicant has previously failed to comply with any Federal, State, or local law, regulation or instruction concerning plant health;
- The applicant has failed to comply with the laws or regulations of a national plant protection organization or equivalent body, as these pertain to plant health;
- The applicant has made false or fraudulent statements or provided false or fraudulent records to APHIS, or;
- The applicant has been convicted or has pled nolo contendere to any crime involving fraud, bribery, extortion, or any other crime involving a lack of integrity.

The above factors represent reasons APHIS might determine, based on past actions and their relevance to the application under consideration, that an applicant cannot be trusted to abide by permit conditions. Additionally, we could also deny a permit if the application for a permit

contains information that is found to be materially false, fraudulent, or deceptive. A permit could also be denied for the regulated article for which the permit is sought if, in APHIS' opinion, the action under the permit would present an unacceptable risk of introducing or disseminating a plant, or if the importation is adverse to the conduct of an eradication, suppression, control, or regulatory program of APHIS, or to applicable import regulations or any administrative instructions. A permit could be denied if the government of the State or Territory into which the article would be imported objects to the proposed importation and provides specific, detailed information that there is a risk it will result in the dissemination of a plant pest or noxious weed into the State, and APHIS concurs.

Withdrawal, Cancellation, and Revocation of Permits

Section 319.7-4 would contain the regulations under which we may revoke a permit to import regulated articles into the United States that has already been issued under part 319. It would also contain procedures for applicants to withdraw their permit application, and for permittees to cancel their permits.

Paragraph (a) would provide that an applicant may withdraw a permit application before issuance of a permit by sending a written request to APHIS. APHIS would then provide written notification to the applicant as promptly as circumstances allow regarding reception of the request and withdrawal of the application.

Paragraph (b) would provide that that if a permittee wishes to cancel a permit after its issuance, he or she must provide the request in writing to APHIS. APHIS would then provide written notification to the applicant as promptly as circumstances allow regarding reception of the request and withdrawal of the application.

Paragraph (c) would provide that the Administrator may revoke any outstanding permit to import regulated articles into the United States, and that a revocation, including the reason for the revocation, would be provided in writing, including by electronic methods, to the permittee as promptly as circumstances permit. The revocation of a permit could be appealed in accordance with proposed § 319.7-5.

Paragraph (d) would contain the conditions under which the Administrator may revoke a permit to import a regulated article. Under this paragraph, the Administrator could revoke a permit to import a regulated article if information is received subsequent to the issuance of the permit that would constitute cause for the denial of an application under proposed § 319.7-3. A permit could also be revoked if the Administrator determines that the permittee has failed to maintain the safeguards or otherwise observe the conditions specified in the permit or in any applicable regulations or administrative instructions.

Sections 414, 421, and 434 of the PPA (7 U.S.C. 7714, 7731, and 7754) give the Secretary the authority to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, and other articles moving into or through the United States, in order to prevent the dissemination of a plant pest or noxious weed, without cost to the Federal Government and in the manner the Secretary considers appropriate and is the least drastic action that is feasible and that would be adequate to prevent the dissemination of any plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States.

In light of this authority granted by the PPA, paragraph (e) would contain the actions that must be taken if a permit is revoked. It would provide that, upon revocation of a permit, the permittee must, without cost to the Federal Government and in the manner the Administrator

considers appropriate, surrender all regulated articles covered by the revoked permit and any other affected plant material to an inspector; destroy all regulated articles covered by the revoked permit and any other affected plant material under the supervision of an inspector; or remove all regulated articles covered by the revoked permit and any other affected plant material from the United States.

Appeal of Denial or Revocation

Proposed § 319.7-5 would set out the procedure for appealing a denial or revocation of a permit to import regulated articles into the United States. As discussed above regarding proposed § 319.7-4(a), all denials of an application for a permit, or revocations of an existing permit, will be provided in writing, including by electronic methods, as promptly as circumstances permit and will include the reasons for the denial or revocation.

Paragraph (b) would provide that any person whose application for a permit has been denied or whose permit has been revoked may appeal the decision in writing to the Administrator within 10 business days from the date the communication of notification of the denial or revocation of the permit was received. The appeal should state all facts and reasons upon which the person is relying to show that the denial or revocation was incorrect.

The Administrator would grant or deny the appeal in writing and will state in writing the reason for the decision.

Changes to Other Subparts in Part 319

As discussed above, we are proposing to establish the new subpart §§ 319.7 through 319.7-5 to contain and consolidate the generally applicable requirements in part 319 for obtaining a permit to import or move interstate plants or plant products.

Other subparts in part 319 currently contain varying requirements relating to permits. We are proposing to remove those requirements from the regulations and amend all the subparts with current requirements to refer to the subpart we are proposing to add. This would ensure that common requirements apply to permits for importation of any article whose importation is regulated under part 319.

In the paragraphs that follow, we discuss the changes we are proposing to the regulations contained in part 319 and cite the specific areas of the regulations we are proposing to change. The foreign quarantine notices of 7 CFR part 319 to which we propose changes are:

Plants and plant products imported for experimental, therapeutic, or developmental purposes under § 319.8. This section contains requirements for controlled import permits (CIP) that may be used to import an article whose importation is prohibited under part 319, or to import an article under conditions that differ from those prescribed in the relevant regulations in part 319. This section was recently promulgated in a final rule in the Federal Register on May 2, 2013 (78 FR 25565-25572), and its provisions for denial and revocation of permits are substantially similar to those discussed in this rule above. We propose to revise the relevant paragraph (g) in § 319.6, Denial and revocation of a CIP, to refer to the provisions of the proposed new subpart.

Foreign cotton and covers regulated under §§ 319.8 through 319.8-26. In § 319.8-1, we would amend the definition of permit to refer to the provisions of the proposed new subpart. We would remove specific language from § 319.8-2(a) and (c) about the written or oral form of a permit application and the information it must contain and information regarding where a permit application may be submitted. This information, updated to be consistent with current APHIS procedures, would now be available in proposed § 319.7-1. We would also remove § 319.8-2(d),

which describes what steps APHIS will take upon receipt of an application. This information, updated to be consistent with current APHIS procedures, would now be available in proposed § 319.7-2. We would also remove paragraph (g), which describes how certain shipments that inadvertently arrive at a port in advance of the issuance of a permit may be held under safeguards pending issuance of the permit. Proposed § 319.7-1(e) would replace this provision with updated language regarding safeguards at the port of entry and oral authorizations for entry. We would also add references in §§ 319.8-1 and 319.8-2 to §§ 319.7 through 319.7-5 to aid readers in locating the newly consolidated information on permits.

Indian corn or maize and related plants and their seeds regulated under §§ 319.24 through 319.24-5 (the corn diseases subpart) and §§ 319.41 through 319.46 (the Indian corn or maize, broomcorn, and related plants subpart). We would revise § 319.24-1, which discusses the application for a permit, to add references to the proposed new subpart, and remove §§ 319.24-2 and 319.24-4 as their provisions for the issuance of permits and the notification of arrival at the port would be covered in the new subpart. We would also remove language concerning the application for a permit in § 319.41-2 and instead refer to the proposed new subpart. In § 319.41-6, we would remove language concerning special mailing tags that are no longer used.

Citrus fruit and nursery stock regulated under § 319.28. We would remove paragraph (i), which deals with permit cancellation and appeals, and paragraph (j), which defines the term inspector. These provisions would be redundant if the proposed new subpart is adopted.

Plants for planting regulated under §§ 319.37 through 319.37-14. In § 319.37-3, we would add references to the new subpart that provides for permit procedures and remove language concerning permit applications and oral permits that is inconsistent with provisions of the proposed new subpart.

Logs, lumber, and other unmanufactured wood articles regulated under §§ 319.40-1 through 319.40-11. In § 319.40-4, we would remove information about permit applications and add references to the new subpart that provides for permit applications and other procedures.

Rice regulated under §§ 319.55 through 319.55-7. In § 319.55-2, which provides for the process of applying for a permit to import rice products, we would add references to the new subpart that provides for permit procedures and remove information about permit applications that is inconsistent with the provisions of the proposed new subpart. We would remove § 319.55-4 as it contains information about permit issuance, which is covered in the proposed new subpart. In § 319.55-7, which provides for the process of importing rice products by mail, we would remove information about mailing tags that is covered in the proposed new subpart and add the requirement that a permit must be obtained for the importation and all conditions of the permit must be met.

Fruits and vegetables regulated under §§ 319.56-1 through 319.56-58. In § 319.56-3, we would remove several paragraphs that contain information about permit applications and issuance, oral permits, and the amendment, withdrawal or denial of permits and the appeal of these actions. We would replace this information with a reference to the proposed new subpart, which would contain information about all these topics.

Those articles restricted in order to prevent the entry of khapra beetle regulated under §§ 319.75 through 319.75-9. Throughout these sections, we would change the term “restricted article” to “regulated article” to be consistent with the rest of part 319 and new §§ 319.7 through 319.7-5. In § 319.75-3, we would remove several paragraphs that contain information about permit applications and issuance, and the withdrawal of permits and the appeal of a withdrawal, adding in their place references to the new subpart that provides for permit procedures.

Changes to Other Parts

As discussed above, we are proposing to apply the new provisions, as appropriate, contained in the new subpart that provides for permit procedures in part 319 to parts 322 and 360. This would provide more consistency to our regulations concerning the process for applying for a permit, the type of information we would require in a permit application, and the provisions for approving, denying, or revoking a permit, and the process for appealing these actions.

Part 322 — Bees, Beekeeping By-Products, and Beekeeping Equipment.

The regulations in 7 CFR part 322 prohibit or restrict the importation of honeybees and honeybee semen in order to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species.

Section 322.13 regulates restricted organisms and states that they may be imported into the United States only by Federal, State, or university researchers. To this section we would add requirements that an importer must also be a person at least 18 years of age, and must be physically present during normal business hours at an address within the United States specified on the permit during any periods when articles are being imported or moved interstate under the permit. We would also remove language in § 322.14 that provides that an applicant for a permit must be a resident, or sponsored by a resident, of the United States, as it would conflict with the proposed change.

We would add to current § 322.15(c), which sets out conditions for denial of a permit, three of the conditions under which we may deny a permit that are discussed above under § 319.7-3. These provisions for the denial of a permit include:

- A permit may be denied to a person who has previously failed to comply with any APHIS regulation.
- A permit may be denied to a person who has previously failed to comply with any Federal, State, or local law, regulation, or instruction concerning the importation of prohibited or restricted foreign agricultural products may also be denied a permit.
- A permit may be denied if the application for a permit contains information that is found to be materially false, fraudulent, or deceptive.

We would also replace the provisions of paragraph (e) of § 322.15 for the appeal of a denial or cancellation of a permit with the new requirements proposed in § 319.7-5 and discussed above.

Part 360 — Noxious Weed Regulations.

The regulations in 7 CFR part 360 prohibit or restrict the importation and interstate movement of those plants that are designated as noxious weeds, as defined by the PPA.

Section 360.304 contains the conditions under which we may deny a permit to move a noxious weed. We would add two additional conditions for denial to this section that are similar to conditions for denial that we proposed to add in § 319.7-3.

We propose to provide that we may deny a permit if the application for a permit contains information that is found to be materially false, fraudulent, or deceptive. A permit may be denied to a person who has previously failed to comply with any APHIS regulation.

We believe that these changes to the regulations will harmonize our permit procedures and make our permit procedures clearer and easier to use.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

Entities that may be affected by the proposed rule are importers of lumber and plywood (North American Industry Classification System [NAICS] code 423310); importers of other miscellaneous durable goods, such as logs, timber and packing material (NAICS 423990); importers of drugs, druggists' supplies, herbs and weeds (NAICS 424210); importers of flowers, nursery stock, and florists' supplies (NAICS 424930), importers of fresh fruits and vegetables (NAICS 424480); importers of other grocery and related products, such as coffee (NAICS 424490); importers of grains and field beans (NAICS 424510); importers of other farm product raw material, such as raw cotton, sugarcane, honeybees and honeybee semen (NAICS 424590); and importers of farm supplies (NAICS 424910). The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small. Imports/export merchants, agents and brokers are identified within the broader wholesaling trade sector.

A firm classified within any of these NAICS wholesale industry categories is considered small if it employs not more than 100 persons. Based on information from the 2007 Economic Census, as shown in table 3, the majority of entities that comprise these industries have fewer than 100 employees.

Table 3.—Prevalence of small entities in certain industries that may be affected by the rule, 2007

Industry wholesale merchants	Number of all establishments	Number of establishments that operated the entire year	Number of establishments with 100 or more employees that operated the entire year	Number of establishments with fewer than 100 employees that operated the entire year	Small-entity establishments as a percentage of those that operated the entire year
Lumber, plywood, millwork, wood panel (NAICS 423310)	8,984	8,303	2,123	6,180	74%
Other miscellaneous durable goods, construction material logs, timber, packing material (NAICS 423990)	10,270	8,764	532	8,232	94%
Drugs, druggists' supplies, botanical drugs, herbs, weeds, (NAICS 424210)	8,535	7,700	2,321	5,379	70%
Fresh fruits and vegetables (NAICS 424480)	5,074	4,437	230	4,207	95%
Other grocery and related products, (coffee) (NAICS 424490)	13,068	11,763	3,286	8,477	72%
Grains and field beans (NAICS 424510)	4,851	4,680	1,238	3,442	74%
Other farm product raw material (raw cotton, sugarcane, honey bees, honeybee semen) (NAICS 424590)	765	663	43	620	94%
Farm supplies (NAICS 424910)	7,738	7,199	61	7,138	99 %
Flower, nursery stock, and florists' supplies (NAICS 424930)	4,218	3,601	67	3,534	98%

While nearly all of the entities that may be affected by the proposed rule are small, none of the economic effects would be significant. The proposed rule would make the permit procedures more transparent and easier to use, enable APHIS to evaluate a permit application more quickly and thoroughly, and allow for more efficient control of the issuance of permits and entry of regulated articles.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects

7 CFR Part 319

Coffee, Cotton, Fruits, 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.

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

Accordingly, we propose to amend 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 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.6 is amended by revising paragraph (g) to read as follows:

§ 319.6 Controlled import permits.

* * * * *

(g) Denial, withdrawal, cancellation, or revocation of permit. The Administrator may deny a permit application in accordance with § 319.7-3, and a permit may be withdrawn, canceled, or revoked in accordance with § 319.7-4.

(1) Action upon revocation of permit. Upon revocation of a permit, the permittee must surrender, destroy, or remove all regulated plant material covered by the permit in accordance with § 319.7-4(e).

(2) Appeal of denial or revocation. Any person whose application for a permit has been denied or whose permit has been revoked may appeal the denial or revocation in accordance with § 319.7-5.

* * * * *

3. A subpart, consisting of §§ 319.7 through 319.7-5, is added to read as follows:

Subpart--Permits: Application, Issuance, Denial, and Revocation

Sec.

319.7 Definitions.

319.7-1 Applying for a permit.

319.7-2 Issuance of permits and labels.

319.7-3 Denial of permits.

319.7-4 Withdrawal, cancellation, and revocation of permits.

319.7-5 Appeal of denial or revocation.

Subpart—Permits: Application, Issuance, Denial, and Revocation

§ 319.7 Definitions.

Administrative instructions. Published documents related to the enforcement of this part and issued under authority of the Plant Protection Act, as amended, by the Administrator.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any employee of the United States Department of Agriculture delegated to act in his or her stead.

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

Applicant. A person at least 18 years of age who, on behalf of him or herself or another person, submits an application for a permit to import into the United States or move interstate a regulated article in accordance with this part.

Approved. Approved by the Administrator of the Animal and Plant Health Inspection Service.

Article. Any material or tangible objects that could harbor plant pests or noxious weeds.

Consignment. A quantity of plants, plant products, and/or other articles being moved from one country to another authorized when required, by a single permit. A consignment may be composed of one or more commodities or lots.

Country of origin. The country where the plants, or plants from which the plant products are derived or were grown or where the non-plant articles were produced.

Enter, entry. To move into, or the act of movement into, the commerce of the United States.

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

Inspector. Any individual authorized by the Administrator of the Animal and Plant Health Inspection Service or the Commissioner of the Bureau of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

Intended use. The purpose for the importation of the regulated article, including, but not limited to, consumption, propagation, or research purposes.

Lot. All the regulated articles on a single means of conveyance that are derived from the same species of plant or are the same type of non-plant article and were subjected to the same treatments prior to importation, and that are consigned to the same person.

Means of conveyance. Any personal property used for or intended for use for the movement of any other personal property.

Move. To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive to carry, enter, import, mail, ship, or transport; to release into the environment; or to allow any of the activities described in this definition.

Oral authorization. Verbal permission to import that may be granted by an inspector at the port of entry.

Permit. A written authorization, including by electronic methods, to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Administrator.

Permittee. The person who, on behalf of self or another person, is legally the importer of an article, meets the requirements of § 319.7-2(f), and is responsible for compliance with the conditions for the importation that is the subject of a permit issued in accordance with part 319.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Plant pest. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan; a nonhuman animal; a parasitic plant; a bacterium; a fungus; a virus or viroid; an infectious agent or other pathogen; or any article similar to or allied with any of the foregoing enumerated articles.

Plant product. Any flower, fruit, vegetable, root, bulb, seed, or other plant part that is not included in the definition of plant, or any manufactured or processed plant or plant part.

Port of entry. A port at which a specified shipment or means of conveyance is accepted for entry or admitted without entry into the United States for transit purposes.

Port of first arrival. The area (such as a seaport, airport, or land border) where a person or means of conveyance first arrives in the United States, and where inspection of regulated articles may be carried out by inspectors.

PPQ. The Plant Protection and Quarantine Program, Animal and Plant Health Inspection Service of the United States Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines and regulations.

Regulated article. Any material or tangible object regulated by this part for entry into the United States or interstate movement.

Soil. The unconsolidated material from the earth's surface that consists of rock and mineral particles mixed with organic material and that supports or is capable of supporting biotic communities.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Treatment. A procedure approved by the Administrator for neutralizing infestations or infections of plant pests or diseases, such as fumigation, application of chemicals or dry or moist heat, or processing, utilization, or storage.

United States. All of the States.

§ 319.7-1 Applying for a permit.

(a) Persons who wish to import regulated articles into the United States must apply for a permit, unless the regulated articles are not subject to a requirement under this part that a permit be issued prior to a consignment's arrival. An applicant for a permit to import regulated articles into the United States in accordance with this part must be:

(1) Capable of acting in the capacity of the permittee in accordance with § 319.7-2(e), or must designate a permittee who is so capable should the permit be issued;

(2) Applying for a permit on behalf of self or on behalf of another person as permittee;
and

(3) At least 18 years of age.

(b) Permit applications must be submitted by the applicant in writing or electronically through one of the means listed at http://www.aphis.usda.gov/plant_health/permits/index.shtml in advance of the action(s) proposed on the permit application.

(c) The application for a permit must contain the following information:

(1) Legal name, address, and contact information of the applicant, and of the permittee if different from the applicant;

(2) Specific type of regulated article (common and scientific names, if applicable);

(3) Country of origin;

(4) Intended use of the regulated article;

(5) Intended port of first arrival; and

(6) A description of any processing, treatment, or handling of the regulated article to be performed prior to or following importation, including the location where any processing or treatment was or will be performed and the names and dosage of any chemical employed in treatments of the regulated article.

(d) The application for a permit may also require the following information:

(1) Means of conveyance;

(2) Quantity of the regulated article;

(3) Estimated date of arrival;

(4) Name, address, and contact information of any broker or subsequent custodian of the regulated article;

(5) Exporting country from which the article is to be moved, when not the country of origin; and

(6) Any other information determined to be necessary by APHIS to inform the decision to issue the permit.

(e) Application for a permit to import regulated articles into the United States must be submitted at least 30 days prior to arrival of the article at the port of entry.

(1) If, through no fault of the importer, a consignment of regulated articles subject to a requirement under this part that a permit be issued prior to a consignment's arrival arrives at a U.S. port before a permit is received, the consignment may be held, under suitable safeguards prescribed by the inspector, in custody at the risk and expense of the importer pending issuance of a permit or authorization from APHIS.

(2) An oral authorization may be granted by an inspector at the port of entry for a consignment, provided that:

(i) All applicable entry requirements are met;

(ii) Proof of application for a written permit is provided to the inspector; and

(iii) PPQ verifies that the application for a written permit has been received and that PPQ intends to issue the permit.

§ 319.7-2 Issuance of permits and labels.

(a) Upon receipt of an application, a permit indicating the applicable conditions for importation will be issued by APHIS if, after review of the application, the regulated articles are, at the discretion of the Administrator, deemed eligible by the Administrator to be imported into

the United States under the conditions specified in the permit. A permit will be issued specifying the applicable conditions of entry and the port of entry, and a copy will be provided to the permittee. The permit will only be valid for the time period indicated on the permit.

(b) The applicant for a permit for the importation of regulated articles into the United States must designate the person who will be named as the permittee upon the permit's issuance. The applicant and the permittee may be the same person.

(c) The act, omission, or failure of the permittee as an officer, agent, or person acting for or employed by any other person within the scope of his or her employment or office will be deemed also to be the act, omission, or failure of the other person.

(d) Failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of any future permits, and civil or criminal penalties for the permittee.

(e) The permittee will remain responsible for the consignment regardless of any delegation to a subsequent custodian of the importation.

(f) A permittee must:

(1) If an individual, have and maintain an address in the United States that is specified on the permit and be physically present during normal business hours at that address during any periods when articles are being imported or moved interstate under the permit; or

(2) If another legal entity, maintain an address or business office in the United States with a designated individual for service of process; and

(3) Serve as the contact for the purpose of communications associated with the movement of the regulated article for the duration of the permit. The PPQ Permit Unit must be informed of a change in contact information for the permittee within 10 business days of such change;

(4) Ensure compliance with the applicable regulatory requirements and permit conditions associated with the movement of the regulated article for the duration of the permit;

(5) Provide written or electronic acknowledgment and acceptance of permit conditions when APHIS requests such acknowledgment;

(6) Serve as the primary contact for communication with APHIS regarding the permit;

(7) Acknowledge in writing that in accordance with Section 8313 of the Plant Protection Act (7 U.S.C. 7701 et seq.), the actions, omissions, or failures of any agent of the permittee may be deemed the actions, omissions, or failures of a permittee as well; and that failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of any future permits, and civil or criminal penalties for the permittee; and

(8) Maintain all conditions of the permit for the entirety of its prescribed duration.

(g) The regulated article may be imported only if all applicable requirements of the permit issued for the importation of the regulated article or any other documents or instructions issued by APHIS are met.

(h) In accordance with the regulations in this part, labels may be issued to the permittee for the importation of regulated articles. Such labels may contain information about the shipment's nature, origin, movement conditions or other matters relevant to the permit and will indicate that the importation is authorized under the conditions specified in the permit.

(1) If issued, the quantity of labels will be sufficient for the permittee to attach one to each parcel. Labels must be affixed to the outer packaging of the parcel.

(2) Importations without such required labels will be refused entry into the United States, unless a label is not required and not issued for the importation.

(i) Even if a permit has been issued for the importation of a regulated article, the regulated article may be imported only if an inspector at the port of entry determines that no remedial measures pursuant to the Plant Protection Act are necessary to mitigate or address any plant pest or noxious weed risks.¹

(j) A permit application may be withdrawn at the request of the applicant prior to the issuance of the permit.

(k) A permit may be canceled after issuance at the request of the permittee.

(l) A permit may be amended if APHIS finds that the permit is incomplete or contains factual errors.

§ 319.7-3 Denial of permits.

(a) APHIS may deny an application for a permit to import a regulated article into the United States. A denial, including the reason for the denial, will be provided in writing, including by electronic methods, to the applicant as promptly as circumstances permit. The denial of a permit may be appealed in accordance with § 319.7-5.

(b) APHIS may deny an application for a permit to import a regulated article:

(1) If APHIS determines that the applicant is not likely to abide by permit conditions.

Factors that may lead to such a determination include, but are not limited to, the following:

¹ An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, and other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(i) The applicant, or a partnership, firm, corporation, or other legal entity in which the applicant has a substantial interest, financial or otherwise, has not complied with any permit that was previously issued by APHIS;

(ii) APHIS determines that issuing the permit would circumvent any order revoking or denying a permit under the Plant Protection Act.

(iii) APHIS determines that the applicant has previously failed to comply with any APHIS regulation

(iv) APHIS determines that the applicant has previously failed to comply with any Federal, State, or local law, regulation or instruction concerning the importation of prohibited or restricted foreign agricultural products;

(v) APHIS determines that the applicant has failed to comply with the laws or regulations of a national plant protection organization or equivalent body, as these pertain to plant health;

(vi) APHIS determines that the applicant has made false or fraudulent statements or provided false or fraudulent records to APHIS, or;

(vii) The applicant has been convicted or has pled nolo contendere to any crime involving fraud, bribery, extortion, or any other crime involving a lack of integrity.

(2) If the application for a permit contains information that is found to be materially false, fraudulent, deceptive, or misrepresentative;

(3) If APHIS concludes that the actions proposed under the permit would present an unacceptable risk to plants and plant products because of the introduction or dissemination of a plant pest, biological control organism, or noxious weed within the United States;

(4) If the importation is adverse to the conduct of an eradication, suppression, control, or regulatory program of APHIS;

(5) If the importation is adverse to applicable import regulations or any administrative instructions or measures; or

(6) If the State executive official, or a State plant protection official authorized to do so, objects to the movement in writing and provides specific, detailed information that there is a risk the movement will result in the dissemination of a plant pest or noxious weed into the State, and APHIS determines that such plant pest risk cannot be adequately addressed or mitigated.

§ 319.7-4 Withdrawal, cancellation, and revocation of permits.

(a) Withdrawal of an application. If the applicant wishes to withdraw a permit application before issuance of a permit, he or she must provide the request in writing to APHIS. APHIS will provide written notification to the applicant as promptly as circumstances allow regarding reception of the request and withdrawal of the application.

(b) Cancellation of permit by permittee. If a permittee wishes to cancel a permit after its issuance, he or she must provide the request in writing to APHIS. APHIS will provide written notification to the applicant as promptly as circumstances allow regarding reception of the request and withdrawal of the application.

(c) Revocation of permit by APHIS. APHIS may revoke any outstanding permit to import regulated articles into the United States. A revocation, including the reason for the revocation, will be provided in writing, including by electronic methods, to the permittee as promptly as circumstances permit. The revocation of a permit may be appealed in accordance with § 319.7-5.

(d) APHIS may revoke a permit to import a regulated article if:

(1) Information is received subsequent to the issuance of the permit of circumstances that APHIS determines would constitute cause for the denial of an application under § 319.7-3; or

(2) APHIS determines that the permittee has failed to maintain the safeguards or otherwise observe the conditions specified in the permit or in any applicable regulations or administrative instructions.

(e) Upon revocation of a permit, the permittee must, without cost to the Federal Government and in the manner and method APHIS considers appropriate, either:

(1) Surrender all regulated articles covered by the revoked permit and any other affected plant material to an inspector;

(2) Destroy, under the supervision of an inspector, all regulated articles covered by the revoked permit and any other affected plant material; or

(3) Remove all regulated articles covered by the revoked permit and any other affected plant material from the United States.

§ 319.7-5 Appeal of denial or revocation.

(a) All denials of an application for a permit, or revocations of an existing permit, will be provided in writing, including by electronic methods, as promptly as circumstances permit and will include the reasons for the denial or revocation.

(b) Any person whose application for a permit has been denied or whose permit has been revoked may appeal the decision in writing to APHIS within 10 business days from the date the communication of notification of the denial or revocation of the permit was received. The appeal must state all facts and reasons upon which the person is relying to show that the denial or revocation was incorrect.

(c) APHIS will grant or deny the appeal in writing and will state in writing the reason for the decision. The denial or revocation will remain in effect during the resolution of the appeal.

§ 319.8-1 [Amended]

4. In § 319.8-1, the definition of permit is amended by adding the words “and in §§ 319.7 through 319.7-5” before the period.

§ 319.8-2 [Amended]

5. Section 319.8-2 is amended as follows:

a. In paragraph (a), by removing, in the third sentence, the words “stating the name and address of the importer, the country from which such material is to be imported, and the kind of cotton or covers it is desired to import” and footnote 1, and adding the words “for a permit in accordance with §§ 319.7 through 319.7-5” in their place.

b. By redesignating footnote 2 as footnote 1.

c. By removing paragraphs (c) and (d) and redesignating paragraphs (e) and (f) as paragraphs (c) and (d), respectively.

d. In newly redesignated paragraph (d), in the first sentence, by removing the words “with all requirements set forth therein and such additional requirements in this subpart as are in terms applicable thereto” and adding the words “with all of the conditions specified in the permit and any applicable regulations or administrative instructions of this part” in their place, and by removing the second and third sentences.

e. By removing paragraph (g) and redesignating paragraph (h) as paragraph (e).

§ 319.8-8 [Amended]

6. Section 319.8-8 is amended by redesignating footnote 3 as footnote 2.

§ 319.8-11 [Amended]

7. Section 319.8-11 is amended by redesignating footnote 4 as footnote 3.

§ 319.8-17 [Amended]

8. Section 319.8-17 is amended by redesignating footnote 5 as footnote 4.

9. Section 319.24-1 is revised to read as follows:

§ 319.24-1 Application for permits for importation of corn.

Persons contemplating the importation of corn into the United States shall obtain a permit in accordance with §§ 319.7 through 319.7-5.

(Approved by the Office of Management and Budget under control number 0579-0049)

§ 319.24-2 [Removed and Reserved]

10. Section 319.24-2 is removed and reserved.

§ 319.24-4 [Removed and Reserved]

11. Section 319.24-4 is removed and reserved.

§ 319.28 [Amended]

12. Section 319.28 is amended by removing paragraphs (i) and (j).

13. Section 319.37-3 is amended as follows:

a. In paragraph (a) introductory text, by adding the words “in accordance with §§ 319.7 through 319.7-5” after the word “Programs”.

b. By removing and reserving paragraph (b) and removing footnote 4.

c. By redesignating footnote 5 as footnote 4.

d. By revising paragraph (d).

e. By removing paragraphs (e) and (f) and redesignating paragraphs (g) and (h) as paragraphs (e) and (f), respectively.

The revision reads as follows:

§ 319.37-3 Permits.

* * * * *

(d) Any permit that has been issued may be revoked by an inspector or APHIS in accordance with § 319.7-4.

* * * * *

§ 319.37-5 [Amended]

14. Section 319.37-5 is amended by redesignating footnote 6 as footnote 5.

§ 319.37-6 [Amended]

15. Section 319.37-6 is amended by redesignating footnote 7 as footnote 6.

§ 319.37-7 [Amended]

16. Section 319.37-7 is amended by redesignating footnote 8 as footnote 7.

§ 319.37-8 [Amended]

17. Section 319.37-8 is amended by redesignating footnotes 9, 10, and 11 as footnotes 8, 9, and 10, respectively.

§ 319.37-13 [Amended]

18. Section 319.37-13 is amended by redesignating footnote 12 as footnote 11.

§ 319.40-4 [Amended]

19. Section 319.40-4 is amended as follows:

- a. By revising paragraph (a).
- b. By removing paragraphs (b)(3), (c), and (d).

The revision reads as follows:

§ 319.40-4 Application for a permit to import regulated articles; issuance and withdrawal of permits.

(a) Application procedure. A written application for a permit must be obtained and submitted in accordance with §§ 319.7 through 319.7-5.

* * * * *

§§ 319.40-5 [Amended]

20. Section 319.40-5 is amended by redesignating footnote 3 as footnote 1.

§ 319.40-9 [Amended]

21. Section 319.40-5 is amended by redesignating footnotes 4 and 5 as footnotes 2 and 3, respectively.

§ 319.40-10 [Amended]

22. Section 319.40-10 is amended by redesignating footnote 6 as footnote 4.

23. Section 319.41-2 is revised to read as follows:

§ 319.41-2 Application for permits.

Persons contemplating the importation of any of the articles specified in § 319.41-1(b) shall first make application to the Plant Protection and Quarantine Program for a permit in accordance with §§ 319.7 through 319.7-5.

(Approved by the Office of Management and Budget under control number 0579-0049)

24. Section 319.41-6 is revised to read as follows:

§ 319.41-6 Importations by mail.

In addition to entries by freight or express provided for in § 319.41-5, importations are permitted by mail of mature corn on the cob from the countries specified in § 319.41-1(b)(2), and

clean shelled corn and clean seed of the other plants covered by § 319.41, provided that a permit has been issued for the importation in accordance with §§ 319.7 through 319.7-5 and all conditions of the permit are met.

(Approved by the Office of Management and Budget under control number 0579-0049)

25. Section 319.55-2 is revised to read as follows:

§ 319.55-2 Application for permit.

Application for a permit to import seed or paddy rice from Mexico or rice straw or rice hulls from any country may be made to the Plant Protection and Quarantine Programs in accordance with §§ 319.7 through 319.7-5.

(Approved by the Office of Management and Budget under control number 0579-0049)

§ 319.55-4 [Removed and Reserved]

26. Section 319.55-4 is removed and reserved.

27. Section 319.55-7 is revised to read as follows:

§ 319.55-7 Importations by mail.

Importations of seed or paddy rice, rice straw, and rice hulls from all foreign countries and localities may be made by mail or cargo, provided that a permit has been issued for the importation in accordance with §§ 319.7 through 319.7-5 and all conditions of the permit are met.

(Approved by the Office of Management and Budget under control number 0579-0049)

28. Section 319.56-3 is amended as follows:

- a. By revising paragraph (b)(2).
- b. By removing paragraphs (b)(3), (b)(4), (b)(5), and (b)(6).

c. In paragraph (c)(1), by removing the words “under paragraph (b) of this section” and adding in their place the words “in accordance with this section and with §§ 319.7 through 319.7-5”.

The revision reads as follows:

§ 319.56-3 General requirements for all imported fruits and vegetables.

* * * * *

(b) * * *

(2) Persons contemplating the importation of any fruits or vegetables under this subpart must apply for a permit in accordance with §§ 319.7 through 319.7-5.

* * * * *

29. Section 319.75 is amended as follows:

a. By revising the section heading.

b. In paragraphs (a) and (c), by removing the word “restricted” each time it appears and adding the word “regulated” in its place.

§ 319.75 Restrictions on importation of regulated articles; disposal of articles refused importation.

* * * * *

§ 319.75-1 [Amended]

30. In § 319.75-1, the definition of phytosanitary certificate of inspection is amended by removing the word “restricted” each time it appears and adding the word “regulated” in its place.

31. Section 319.75-2 is amended as follows:

a. By revising the section heading.

b. In paragraph (a) introductory text, by removing the word “restricted” each time it appears and adding the word “regulated” in its place.

The revision reads as follows:

§ 319.75-2 Regulated articles.¹

* * * * *

¹ The importation of regulated articles may be subject to prohibitions or restrictions under other provisions of 7 CFR part 319. For example, fresh whole chilies (Capsicum spp.) and fresh whole red peppers (Capsicum spp.) from Pakistan are prohibited from being imported into the United States under the provisions of Subpart--Fruits and Vegetables of this part.

* * * * *

32. Section 319.75-3 is revised to read as follows:

§ 319.75-3 Permits.

A restricted article may be imported only after issuance of a written permit or oral authorization by the Plant Protection and Quarantine Programs in accordance with §§ 319.7 through 319.7-5.

(Approved by the Office of Management and Budget under control number 0579-0049)

§ 319.75-4 [Amended]

33. Section 319.75-4 is amended by removing the word “restricted” and adding the word “regulated” in its place.

§ 319.75-5 [Amended]

34. In § 319.75-5, paragraphs (a) and (b) are amended by removing the word “restricted” each time it appears in and adding the word “regulated” in its place.

§ 319.75-6 [Amended]

35. Section 319.75-6 is amended by removing the word “restricted” and adding the word “regulated” in its place.

§ 319.75-7 [Amended]

36. In § 319.75-7, footnote 3 is redesignated as footnote 4.

§ 319.75-8 [Amended]

37. Section 319.75-8 is amended by removing the word “restricted” both times it appears and adding the word “regulated” in its place.

§ 319.75-9 [Amended]

38. In § 319.75-9, paragraphs (a), (b), and (c) are amended by removing the word “restricted” each time it appears in and adding the word “regulated” in its place.

PART 322–BEEES, BEEKEEPING BYPRODUCTS, AND BEEKEEPING EQUIPMENT

39. The authority citation for part 322 continues to read as follows:

Authority: 7 U.S.C. 281; 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

40. In § 322.13, paragraph (b) is revised to read as follows:

§ 322.13 General requirements; restricted organisms.

* * * * *

(b) Persons importing restricted organisms into the United States must be and Federal, State, or university researchers; be at least 18 years of age; and be physically present during normal business hours at an address within the United States specified on the permit during any periods when articles are being imported or moved interstate under the permit. All such importations must be for research or experimental purposes and in accordance with this part.

§ 322.14 [Amended]

41. In § 322.14, paragraph (a)(1) is amended by removing the second and third sentences.

42. Section 322.15 is amended by revising the section heading, adding paragraph (c)(5), and revising paragraph (e) to read as follows:

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

* * * * *

(c) * * *

(5) APHIS may also deny a permit to import restricted organisms:

(i) To a person who has previously failed to comply with any APHIS regulation, except:

(A) A permit revoked in an investigation concerning that failure has been reinstated on appeal, at the discretion of APHIS; or

(B) All measures ordered by APHIS to correct the failure, including but not limited to, payment of penalties or restitution, have been complied with to the satisfaction of APHIS.

(ii) To a person who has previously failed to comply with any international or Federal regulation or instruction concerning the importation of prohibited or restricted foreign agricultural products; or

(iii) If the application for a permit contains information that is found to be materially false, fraudulent, deceptive, or misrepresentative.

* * * * *

(e) Appealing the denial of permit applications or revocation of permits. If your permit application has been denied or your permit has been revoked, APHIS will inform you in writing, including by electronic methods, as promptly as circumstances permit and will include the reasons for the denial or revocation. You may appeal the decision by writing to APHIS within 10 business days from the date you received the communication notifying you of the denial or revocation of the permit. Your appeal must state all facts and reasons upon which you are

relying to show that your permit application was wrongfully denied or your permit was wrongfully revoked. APHIS will grant or deny the appeal in writing and will state in writing the reason for the decision. The denial or revocation will remain in effect during the resolution of the appeal.

* * * * *

PART 360–NOXIOUS WEED REGULATIONS

43. The authority citation for part 360 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

44. Section 360.304 is amended as follows:

- a. By revising the section heading.
- b. In paragraph (a)(5), by removing the period at the end of the sentence and adding the word “; or” in its place.
- c. By adding paragraphs (a)(6) and (7).
- d. In paragraph (b), introductory text, by removing the word “cancel” and adding the word “revoke” in its place.
- e. In paragraph (c), by removing the word “canceled” each time it appears and adding the word “revoked” in its place, and by removing the word “cancellation” and adding the word “revocation” in its place.

The revision and additions read as follows:

§ 360.304 Denial of an application for a permit to move a noxious weed; revocation of a permit to move a noxious weed.

(a) * * *

(6) The application for the permit contains information that is found to be materially false, fraudulent, or deceptive.

(7) APHIS may deny a permit to a person who has previously failed to comply with any APHIS regulation.

* * * * *

45. Section 360.305 is amended by revising the section heading and by removing the word “canceled” each time it appears and adding the word “revoked” in its place.

The revision reads as follows:

§ 360.305 Disposal of noxious weeds when permits are revoked.

* * * * *

Done in Washington, DC, this 14th day of June 2013 .

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013-14638 Filed 06/20/2013 at 8:45 am; Publication Date: 06/21/2013]