certain nonindigenous organisms. As U.S. agriculture's "first line of defense," we believe that APHIS must supplement its current regulations to prevent or minimize the potential problems presented by the introduction of nonindigenous organisms whose plant pest status is unknown. Therefore, we are proposing to establish comprehensive regulations governing the introduction of those nonindigenous organisms that we have reason to believe may be plant pests or may result in the introduction or dissemination of plant pests.

In our proposed regulations, a nonindigenous organism is defined as any organism proposed for introduction into any area of the United States beyond its established range. Therefore, an organism does not have to be from another country to be considered nonindigenous; an organism that has an established range only in one part of the United States would be considered nonindigenous in another part of the United States.

The proposed regulations would not eliminate the plant pest regulations in 7 CFR 330.200. Those regulations would remain in place to govern the importation and interstate movement of known plant pests, both indigenous and nonindigenous. The proposed regulations would allow APHIS to examine certain nonindigenous organisms proposed for introduction to determine whether those nonindigenous organisms are plant pests or constitute a risk of the introduction or dissemination of plant pests. The proposed regulations would impose conditions on the introduction of those nonindigenous organisms in order to prevent plant pest dissemination. Under the proposed regulations, persons wishing to import or move interstate a regulated nonindigenous organism would first have to apply for a permit from APHIS. The proposed regulations would also contain specific provisions regarding permits for the release of certain nonindigenous organisms, such as pollinators or biological control agents, into the environment.

It is the USDA's position that the provisions of the proposed rule that would require a permit for the release of a nonindigenous organism into the environment are consistent with the Federal Plant Pest Act and the Plant Quarantine Act and are a reasonable construction of the Secretary of Agriculture's statutory authority under those acts. The Federal Plant Pest Act and the Plant Quarantine Act authorize the Secretary of Agriculture to take certain actions to prevent the

introduction into and dissemination within the United States of plant pests.

## Scope

Our authority to regulate nonindigenous organisms is based on there being reason to believe that such organisms may be plant pests or may result in the introduction or dissemination of plant pests. Therefore, any nonindigenous organisms that we propose to regulate would necessarily have to fall within one of the categories of organisms included in the definition of a plant pest or would have to present a risk of introducing or disseminating a plant pest. The Federal Plant Pest Act defines a plant pest as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.'

Within the categories of organisms addressed above, there are several nonindigenous organisms that are already regulated by APHIS elsewhere in its regulations and would not, therefore, be included in the scope of the proposed regulations. Those organisms are addressed below in the discussion of proposed § 335.2.

## **Proposed Regulations**

The proposed regulations contain nine sections:

§ 335.1 Definitions.

§ 335.2 Regulated organisms.

§ 335.3 General restrictions on the introduction of regulated organisms. § 335.4 Permits for the introduction of regulated organisms.

§ 335.5 Nonindigenous organisms exempted from regulation under this part.

§ 335.6 Conditions for the introduction of regulated organisms.

§ 335.7 Facilities for the containment of regulated organisms.

§ 335.8 Container requirements for the movement of regulated organisms. § 335.9 Costs and charges.

Each of these sections is discussed in detail below.

## Definitions (§ 335.1)

In proposed § 335.1, we define terms used in the regulations. Several of these terms—Administrator, Animal and Plant Health Inspection Service (APHIS), APHIS inspector, import, interstate, introduce (introduction),

move (moving, movement), permit, person, port of first arrival, State, and United States—are terms used by APHIS elsewhere in its regulations in 7 CFR chapter III and 9 CFR chapter I. The remaining terms, as they apply to our proposed regulations, are explained below.

We would define *nonindigenous* organism as "any organism proposed for introduction into any area of the United States beyond its established range." This definition would place the primary focus on whether the area into which an organism would be introduced is within or outside of the organism's established range (which we would define as "the area in which a species maintains a self-sustaining, free-living population").

To identify the organisms covered by the proposed regulations, the term regulated organism would be defined as "any living stage of any nonindigenous organism belonging to the taxa listed in § 335.2(a) that is not listed in § 335.2(b) or exempt in accordance with § 335.5." The list in § 335.2(a) is set forth later in

this proposed rule.

We would define *environment* as "all land, air, and water; and all living organisms in association with land, air, and water." As part of our review of permit applications, we must consider a regulated organism's effects on the environment within its established range and its potential to affect the environment in the area into which its introduction is proposed. The proposed definition, therefore, takes into account those elements of what is commonly considered to be "the environment" that could be affected by the introduction of a regulated organism.

Established would be defined as "the condition of a species that has formed a self-sustaining, free-living population at a given location." We are proposing to require that a person seeking a permit furnish, as part of a permit application, information pertaining to a regulated organism in its established range. This definition would help to clarify the information to be included in an

application.

Plant would be defined as "any stage of any member of the plant kingdom including, but not limited to, trees, plant tissue cultures, plantlet cultures, pollen, shrubs, vines, cuttings, grafts, scions, buds, roots, seeds, cells, tubers, and stems." Plant product would be defined as "any processed or manufactured plant or plant part." These definitions are based on our statutory authority under the Federal Plant Pest Act, as amended, and the Plant Quarantine Act, as amended.

We would use the definition provided for *plant pest* in the Federal Plant Pest