All microorganisms, such as fungi, bacteria, nematodes, or cells, would have to be enclosed in a container as specified in paragraph (b)(3)(i) or (b)(3)(ii) of proposed § 335.8. Microorganisms not exceeding 50 mL in volume would have to be enclosed in a durable, watertight primary container, which would have to be enclosed in a second durable, watertight container (secondary container). Several primary containers could be enclosed in a single secondary container if the total volume of all the primary containers enclosed in a single secondary container did not exceed 50 mL. The space at the top, bottom, and sides between the primary and secondary containers would have to contain sufficient nonparticulate absorbent material (e.g., paper towel) to absorb the entire contents of the primary container(s). The secondary container would then have to be enclosed in an outer container constructed of corrugated fiberboard, corrugated cardboard, wood, or other material of equivalent strength.

Microorganisms that exceeded a volume of 50 mL would have to comply with the requirements described in the above paragraph. In addition, a shockabsorbing material, in volume at least equal to that of the absorbent material between the primary and secondary containers, would have to be placed at the top, bottom, and sides between the secondary container and the outer container. Single primary containers could not contain more than 1,000 mL of material. However, two or more primary containers whose combined volumes do not exceed 1,000 mL could be enclosed in a single secondary container. The maximum amount of microorganisms that could be enclosed within a single outer container could not exceed 4,000 mL.

If dry ice was used as a refrigerant, it would have to be placed between the secondary container and the outer container. The shock-absorbing material would have to be placed so that the secondary container would not become loose inside the outer container as the dry ice sublimates.

Insects, mites, or other arthropods would have to be enclosed in a container as specified for arthropods in paragraph (b)(4) of proposed § 335.8 or in a container specified for microorganisms described in paragraph (b)(3) of proposed § 335.8. Under proposed § 335.8(b)(4), arthropods (any life stage) would have to be enclosed in a primary container (insulated vacuum container, metal, or plastic) and the container would have to be sealed to prevent escape of the arthropods. The primary container would have to be

enclosed in a secondary container of crushproof styrofoam or other material of equivalent strength; one or more rigid ice packs could also be enclosed in the secondary container; and sufficient packing material would have to be added around the primary container to prevent movement of the primary container within the secondary container. The secondary container would have to be enclosed in an outer container constructed of corrugated fiberboard, corrugated cardboard, wood, or other material of equivalent strength.

Any organism not covered in paragraph (b)(1), (b)(2), or (b)(4) of proposed § 335.8 that did not require continuous access to atmospheric oxygen would have to be enclosed in a container as specified in paragraph (b)(3) or (b)(4) of this section. Any organism that was not a plant and that required continuous access to atmospheric oxygen would have to be enclosed in a primary container constructed with a sturdy, crush-proof frame of wood, metal, or other material of equivalent strength, surrounded by mesh or netting of a strength and mesh size sufficient to prevent the escape of the smallest organism in the container, with the edges and seams of the mesh or netting sealed to prevent the escape of organisms. Each primary container would have to be enclosed in a larger secondary container constructed of wood, metal, or other material of equivalent strength. The primary and secondary containers would have to be enclosed in an outer container constructed of corrugated fiberboard, corrugated cardboard, wood, or other material of equivalent strength, which outer container could have air holes or spaces in the sides and/or ends of the container, provided that the outer container would have to retain sufficient strength to prevent crushing of the primary and secondary containers.

We believe that these proposed requirements would be sufficient to prevent the accidental release of the regulated organism and any material moved with the organism.

We understand that there may be unique circumstances, such as the nature, volume, or life stage of a regulated organism, that could make these proposed container requirements inappropriate for the importation of interstate movement of a particular regulated organism. For that reason, we would allow a person to request a variance from the container requirements by submitting a written statement to APHIS describing why the applicable container requirements are inappropriate for the regulated organism

that the person proposes to move, and what container requirements the person would use in lieu of the applicable container requirements. APHIS would make a decision regarding the variance request and would inform the applicant of the decision prior to the issuance of a permit. If $\ensuremath{\mathsf{APHIS}}$ granted the variance request, a permit would be issued if APHIS had determined from its review of the permit application that the regulated organism could be introduced without risk of plant pest dissemination. If APHIS denied the variance request, the applicant could submit an appeal to the Administrator by following the procedure detailed in the proposed regulations; however, no permit would be issued until such time as the appeal was resolved and the applicant agreed to abide by APHIS' decision.

Costs and Charges (§ 335.9)

Proposed § 335.9 relates to costs and charges that would apply in connection with the services of an APHIS inspector. It is the policy of APHIS that the services of an APHIS inspector during regularly assigned hours of duty and at the usual places of duty be furnished without cost to persons requiring inspection, unless a user fee is payable under 7 CFR part 354. There are, however, no user fees currently in place that would affect the permitting or inspection activities that would be carried out under the proposed regulations.

Proposed § 335.9 further provides that any costs or charges incidental to inspection or to compliance with the provisions of this part, other than an APHIS inspector's services, are not the responsibility of the USDA.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

We are proposing to establish comprehensive regulations governing the introduction (importation, interstate movement, and release into the environment) of certain regulated organisms. The proposed regulations would clarify the permit application process and provide a means of screening regulated organisms prior to their introduction to determine the potential plant pest risk associated with a particular introduction. According to the OTA report cited above, harmful nonindigenous species have caused an economic loss of approximately \$97 billion between 1906 and 1991. When weighed against that figure, the costs of