amount of microorganisms that may be enclosed within a single outer container shall not exceed 4,000 mL.

(iii) *Dry ice*. If dry ice is used as a refrigerant, it must be placed between the secondary container and the outer container. The shock-absorbing material must be placed so that the secondary container does not become loose inside the outer container as the dry ice sublimates.

(4) Arthropods. Insects, mites, or other arthropods must be enclosed in a container as specified in this paragraph or in paragraph (b)(3) of this section. Arthropods (any life stage) must be enclosed in a primary container (insulated vacuum container, metal, or plastic) and the container must be sealed to prevent escape of the arthropods. The primary container must be enclosed in a secondary container of crushproof styrofoam or other material of equivalent strength; one or more rigid ice packs may also be enclosed in the secondary container; and sufficient packing material must be added around the primary container to prevent movement of the primary container within the secondary container. The secondary container must be enclosed in an outer container constructed of corrugated fiberboard, corrugated cardboard, wood, or other material of equivalent strength.

(5) Other organisms. Any organism not covered in paragraph (b)(1), (b)(2), or (b)(4) of this section that does not require continuous access to atmospheric oxygen must be enclosed in a container as specified in paragraph (b)(3) or (b)(4) of this section. Any organism that is not a plant and that requires continuous access to atmospheric oxygen must 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 must be enclosed in a larger secondary container constructed of wood, metal, or other material of equivalent strength. The primary and secondary containers must be enclosed in an outer container constructed of corrugated fiberboard, corrugated cardboard, wood, or other material of equivalent strength, which outer container may have air holes or spaces in the sides and/or ends of the container, provided that the outer container must retain sufficient strength to prevent crushing of the primary and secondary containers.

(c) Request for a variance from container requirements. If the person applying for a permit for the introduction of a regulated organism believes that the container requirements in paragraph (b) of this section are inappropriate for the importation or interstate movement of a regulated organism due to unique circumstances (such as the nature, volume, or life stage of the regulated organism), that person may request a variance from the container requirements in paragraph (b) of this section when applying for a permit. The request for a variance under this section must consist of a written statement describing why the applicable container requirements in paragraph (b) of this section 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 of paragraph (b) of this section. Prior to the issuance of a permit, APHIS will advise the person as to the disposition of his or her request for a variance from the container requirements in paragraph (b) of this section. If APHIS has granted the variance request, a permit will be issued if APHIS had determined from its review of the permit application that the

regulated organism can be introduced without risk of plant pest dissemination. Any person who has been denied a variance from the container requirements in paragraph (b) of this section may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the denial. The appeal must state all of the facts and reasons upon which the person relies to show that the variance was wrongfully denied. The Administrator will grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances allow. If there is a conflict as to any material fact and the person denied a variance requests a hearing, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. No permit will be issued until such time as the appeal is resolved and the applicant has agreed to abide by APHIS' decision.

## § 335.9 Costs and charges.

Unless a user fee is payable under § 354.3 of this chapter, the services of an APHIS inspector during regularly assigned hours of duty and at the usual places of duty will be furnished without cost. The U.S. Department of Agriculture's provisions relating to overtime charges for an APHIS inspector's services are set forth in part 354 of this chapter. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with this part, other than for the services of the APHIS inspector.

Done in Washington, DC, this 23rd day of January 1995.

## Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

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