

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 319 and 322

[Docket No. 89-117-4]

RIN 0579-AA37

#### Honeybees and Honeybee Semen From New Zealand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

**SUMMARY:** We are amending the honeybee and honeybee semen regulations to allow honeybees and honeybee semen from New Zealand to transit the United States, subject to certain conditions. This action relieves certain restrictions on the movement of honeybees and honeybee semen from New Zealand through the United States without presenting a significant risk of introducing harmful diseases or parasites of honeybees into the United States.

**EFFECTIVE DATE:** March 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Fons, Operations Officer, Port Operations Staff, Plant Protection and Quarantine, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January or February. Telephone: (301) 436-8295 (Hyattsville); (301) 734-8295 (Riverdale).

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 322 (referred to below as the regulations) govern the importation into the United States of honeybees and honeybee semen. These regulations were

established pursuant to the Honeybee Act (7 U.S.C. 281 *et seq.*). The Honeybee Act was designed to prevent the movement into the United States of diseases and parasites harmful to honeybees, and to prevent their spread within the United States. In addition, the Honeybee Act was designed to prevent the movement into the United States of undesirable species or subspecies of honeybees, such as *Apis mellifera scutellata*, commonly known in the United States as the African honeybee.

In this regard, 7 U.S.C. 281 provides, in relevant part, that:

(a) IN GENERAL.—The Secretary of Agriculture is authorized to prohibit or restrict the importation or entry of honeybees and honeybee semen into or through the United States in order to prevent the introduction and spread of diseases and parasites harmful to honeybees, the introduction of genetically undesirable germ plasm of honeybees, or the introduction and spread of undesirable species or subspecies of honeybees and the semen of honeybees.

Under the regulations, honeybees may be imported into the United States from New Zealand only by the United States Department of Agriculture (USDA) and only for experimental or scientific purposes. Honeybee semen may be imported into the United States from New Zealand only under a permit issued by the USDA and in accordance with specific marking and shipping requirements.

On February 6, 1990, we published in the **Federal Register** (55 FR 3968-3969, Docket No. 89-117) a proposal to amend the regulations by removing these restrictions on honeybees and honeybee semen imported into the United States from New Zealand. We believed that the proposal was warranted because it had been determined that New Zealand was free of diseases and parasites harmful to honeybees in the United States, and undesirable species or subspecies of honeybees. This determination was made based on USDA review of the scientific literature; an ongoing sampling program of New Zealand honeybees by the USDA; an ongoing exchange of information between New Zealand and the United States relating to bee diseases, bee parasites, and undesirable species and subspecies of honeybees; and a review by USDA of

the bee enforcement program in New Zealand.<sup>1</sup>

However, we recognized that shipments of honeybees or honeybee semen from New Zealand could, during transit through countries from which honeybees and honeybee semen may not be imported into the United States, come in contact with foreign honeybees that may be diseased. We therefore proposed to allow honeybees and honeybee semen to be imported from New Zealand into the United States only if they were shipped to the United States nonstop and if they were accompanied by a certificate issued by the New Zealand Department of Agriculture certifying that the honeybees and honeybee semen were of New Zealand origin. We also proposed to amend § 322.2 to add a definition for "certificate of origin."

We solicited comments concerning the 1990 proposal for 15 days ending February 21, 1990. In response to a comment, we published a notice in the **Federal Register** on March 2, 1990 (55 FR 7499, Docket No. 90-025), that extended the comment period to April 2, 1990. We received 37 comments by that date. We did not at that time publish a final rule, but have since determined that we wish to proceed with rulemaking. On July 18, 1994, we published in the **Federal Register** (59 FR 36373-36374, Docket No. 89-117-3) a notice to reopen and extend the comment period on the proposal to August 17, 1994. We received an additional 20 comments by that date. The comments were from apiaries, queen breeders, beekeeper associations, State departments of agriculture, and agriculture departments of foreign governments. Of the total comments received, 11 were in favor of the proposed rule. The remaining comments raised objections or concerns, which are discussed below by topic.

#### Comments Resulting in a Change to the Rule

A number of commenters were concerned about a disorder called half moon syndrome (HMS) that has been reported in New Zealand honeybee colonies. Commenters said there are reports that HMS may have been

<sup>1</sup> Additional information may be obtained by writing to the person listed under FOR FURTHER INFORMATION CONTACT.

introduced into Canada from shipments of New Zealand honeybees.

According to our information, HMS is not known to be present in any country other than New Zealand. In 1984, ARS researchers visited New Zealand to study honeybees and honeybee diseases there, and specifically to study HMS. Field tests conducted in New Zealand by ARS researchers to determine the communicability of HMS indicated that the symptoms of the syndrome could not be reproduced in a healthy colony, even when the healthy colony was given a massive inoculum (a comb containing larvae with HMS). In laboratory tests, no pathogen or other causative agent of HMS could be found. Field observations of New Zealand colonies also showed that symptoms of HMS appeared to clear up in time without assistance or treatment. Further, ARS has imported honeybees from New Zealand (50 queens and 20 packages of honeybees from a variety of sources) under a USDA permit on three occasions over the past 10 years, and HMS was not observed in any colony. On the basis of these observations and tests, ARS concluded that HMS is not a highly communicable disease.

In addition, over the past 5 years, Canada has imported approximately 80,500 packages of honeybees and 143,350 queens from New Zealand. When New Zealand honeybees were first imported into Canada, beekeepers receiving the honeybees were specifically requested to look for any abnormal developments that resembled HMS in their colonies. One case was reported, but the presence of the syndrome was never confirmed. Agriculture Canada continues to allow the importation of New Zealand honeybees into Canada because they have concluded that if HMS is present in New Zealand stock, it is not communicable to Canadian honeybees, or there would be ample evidence of its presence by now.

However, it is true that we do not know what causes HMS, nor do we know how the syndrome was communicated in those instances where it has occurred. Also, because we have not found a causative agent of HMS, we do not know for certain whether or not the syndrome would be communicable in the varied climates of the United States.

Commenters had other disease concerns regarding New Zealand honeybees, in addition to HMS. Specifically, commenters cited reports of a high incidence of chalk-brood disease in New Zealand. Some other commenters were concerned that a number of diseases that may be present

in New Zealand honeybees, such as chronic paralysis virus, Kashmir bee virus, melanosis, and *Malpighamoeba mellifica*, could be introduced into the State of Hawaii. We also received a comment stating that the proposal conflicts with a law of the State of Hawaii which prohibits importation of live honeybees into Hawaii because of disease and pest concerns. Our reports indicate that chalk-brood and the other diseases mentioned by commenters are present in New Zealand. These diseases are also found in U.S. apiaries, but may not be present in every State. In response to commenters' concerns, we have determined that, because of lack of information at this time, we cannot be certain that the introduction or spread of HMS and the other diseases mentioned by commenters into certain States would not prove harmful to U.S. honeybees. We plan to continue to research HMS and to conduct surveys to ascertain the scope of other diseases such as chalk-brood in the United States, to help us determine whether or not New Zealand honeybees can safely be imported. We encourage interested persons who may have information in this regard to share that information with us.

In response to comments, and until we have conducted further research, we are changing the proposed rule to allow only the transit of New Zealand honeybees and honeybee semen through the United States en route to another country, and only in accordance with specific requirements to help ensure that the New Zealand honeybees do not escape while in transit through the United States. We believe that allowing New Zealand honeybees and honeybee semen to transit the United States will enable New Zealand to ship its honeybees to foreign markets without posing a significant risk of introducing or spreading harmful diseases or parasites to apiaries in the United States.

We will require that the honeybees transiting the United States be contained in cages that are completely enclosed by screens with mesh fine enough to prevent the honeybees from passing through, and that each pallet of cages be covered by an escape-proof net that is secured tightly to the pallet so that no honeybees can escape from underneath the net. The honeybees will have to be shipped by air through a port staffed by an inspector.<sup>2</sup> The honeybees may be transloaded from one aircraft to

another at the port of arrival in the United States, provided the transloading is done under the supervision of an inspector and the area used for any storage of the honeybees between flights is within an enclosed building. These requirements will help ensure that no honeybees escape from the shipment while in the United States. Lastly, we will require that, at least 2 days prior to the expected date of arrival at a port in the United States, the shipper must notify the Animal and Plant Health Inspection Service (APHIS) Officer in Charge at the port of arrival of the following: The dates of arrival and departure; the name and address of both the shipper and receiver; the quantity of queens and the number of cages of package honeybees in the shipment; and, the name of the airline carrying the shipment. Notification of arrival will ensure that an inspector is available to supervise any necessary transloading, and to certify that the shipment is moving in compliance with the regulations.

#### Other Comments

Some commenters stated that we do not know whether honeybees from New Zealand are susceptible to tracheal mite. New Zealand has never been infested with tracheal mite, and so, commenters said, the honeybees have not had selection for resistance to these mites. They believe it would be a disservice to U.S. beekeepers to allow them to buy stock that is susceptible to tracheal mites.

This comment introduces the question of the quality of New Zealand honeybees. The Honeybee Act, under which this rule is being issued, is designed to prevent the movement into the United States of diseases and parasites harmful to honeybees, and undesirable species or subspecies of honeybees and their semen. New Zealand honeybees are free from tracheal mite, and so their importation would not pose a significant risk of introducing or spreading tracheal mite within the United States. Further, even though U.S. apiaries have been plagued by tracheal mite for a number of years, honeybees in the United States are still susceptible to the mite and there is no research or experience that indicates honeybees from New Zealand would be more susceptible to tracheal mites than U.S. honeybees.

A few commenters stated that Canadian beekeepers report a high incidence of supersedure in New Zealand queens. This comment also voices a concern about the quality of New Zealand honeybees. Researchers from USDA's Agricultural Research

<sup>2</sup> For a list of ports staffed by inspectors, contact the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, Permit Unit, 4700 River Road Unit 136, Riverdale, Maryland 20737-1236.

Service (ARS) have examined the issue of supersedure in queens from New Zealand and have concluded that there does not seem to be a genetic reason for the difficulty. Rather, stress from travelling overseas or damage or injury to the queens during travel is the likely cause of supersedure of New Zealand queens. In accordance with the Honeybee Act, our regulations impose only those restrictions necessary to prevent the spread of diseases and parasites harmful to honeybees, and undesirable species or subspecies of honeybees and their semen.

A few commenters asserted that, although ARS may have checked samples of honeybees from New Zealand, no raw data is available to the beekeeping community. Commenters were concerned that the sampling levels may not have been representative of all the honeybees in New Zealand.

ARS researchers traveled to New Zealand in 1984, where they conducted both field and laboratory tests and observations to determine the health status of New Zealand honeybees. To supplement their on-site studies in New Zealand, ARS imported 50 queens from six different sources in April, 1985. After one year, the resulting colonies showed no symptoms of any exotic diseases or parasites. In April, 1987, ARS imported 10 3-pound packages of honeybees from New Zealand; again, after one year, the package honeybees were all in good condition with no signs of any exotic diseases or parasites. In May, 1988, ARS imported 20 2-pound fibertube packages of honeybees from New Zealand, which also exhibited no signs of exotic parasites or diseases. In general, the honeybees imported by ARS arrived in good condition with very few dead honeybees in the shipping containers.

Many commenters expressed frustration over the embargo Canada and other major importing countries have placed on U.S. queens. They said the U.S. queen rearing industry is in financial difficulty because of shrinking markets, and competition from New Zealand could seriously hurt it further. We believe it would be unlikely that New Zealand would provide significant competition to U.S. producers if their honeybees were imported into the United States. It was determined in the regulatory flexibility analysis for the proposed rule that the price disadvantage for New Zealand exporters, combined with the lack of demand in the United States for New Zealand honeybees, would make it difficult for New Zealand honeybees to have a significant impact on U.S. markets. However, under this final rule,

honeybees and honeybee semen from New Zealand will not be imported into the United States, and therefore, there is no potential impact on U.S. honeybee producers from competition in the U.S. market.

One commenter said that, while it is true that the mainland United States does not ship queens until late March or early April, Hawaii produces and ships queens beginning in February, significantly overlapping the New Zealand honeybee shipping season. According to our information, New Zealand queens can be produced from September through April. New Zealand's September to November queen production is fully absorbed domestically and by exports to some Middle East and Pacific Island markets. The February to April production is fully committed to Canadian markets. That only leaves a production window in December and January when New Zealand producers would have honeybees available for U.S. markets. This window would not overlap the Hawaiian season. Even so, as this final rule will not permit the importation of New Zealand honeybees into the United States, this rule will have no economic impact on U.S. producers in Hawaii or any other State.

Finally, one commenter suggested that a system of permits should be instituted until experience proves that importation of honeybees from New Zealand is hazard-free. If a problem develops, the honeybees could then be traced to their location of origin in New Zealand. However, as set forth above, this final rule will not permit the importation of New Zealand honeybees into the United States, and will impose strict precautions to be taken during the honeybees' transit of the United States. This final rule also requires that shipments of honeybees and honeybee semen from New Zealand be accompanied by a certificate issued by the New Zealand Department of Agriculture certifying that the shipment originated in New Zealand, and the honeybees or honeybee semen will have to be shipped nonstop to the United States. We believe these precautions will ensure that the transit of honeybees and honeybee semen from New Zealand poses no significant threat to U.S. honeybees, and that, therefore, a permit system appears to be unnecessary.

#### Miscellaneous

We are making a change to the proposed rule by removing the proposed definition of "certificate of origin." In order to make the requirement more clear, we are instead stating in the rule that "the honeybees or honeybee semen

must be accompanied by a certificate issued by the New Zealand Department of Agriculture certifying that the honeybees or honeybee semen were derived in or shipped from an apiary in New Zealand."

We are also making two editorial changes to the regulations. The first removes the footnote in § 322.1 that quotes a part of the Honeybee Act. Prior to January 1, 1995, the Honeybee Act contained criteria for determining which countries could be listed in the regulations as countries from which honeybees or honeybee semen could be imported into the United States. The Honeybee Act, as amended by the implementing legislation for the General Agreement on Tariffs and Trade, no longer contains those criteria and, therefore, no longer needs to be set forth in the regulations. The second change is to the Foreign Quarantine Notices, contained in 7 CFR part 319. The regulations in 7 CFR 319.76-2 refer to the Honeybee Act. Specifically, footnote 1 in § 319.76-2 states, in part, that "The Honeybee Act \* \* \* prohibits the importation into the United States of any live honeybees of the genus *Apis* \* \* \*" We are amending this footnote to reflect the January 1, 1995, amendments to the Honeybee Act discussed above.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The 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.

This final rule allows honeybees and honeybee semen from New Zealand to transit the United States en route to foreign destinations, subject to certain conditions. This rule will primarily affect the package bee and queen industry in New Zealand. Currently, the lack of economical shipping routes outside the United States for New Zealand honeybees makes shipments from New Zealand to many foreign destinations cost prohibitive. The provisions of this rule will provide honeybee producers in New Zealand with economically feasible access to these foreign destinations. However, because the honeybees and honeybee semen will not be imported into the United States, there is no potential impact on U.S. honeybee producers from competition in the U.S. market.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not

have a significant economic impact on a substantial number of small entities.

**Executive Order 12778**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0072.

**List of Subjects**

*7 CFR Part 319*

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

*7 CFR Part 322*

Bees, Honey, Imports, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 319 and 322 are amended as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151-167, and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

**Subpart—Exotic Bee Diseases and Parasites**

**§ 319.76 [Amended]**

2. In § 319.76-2, footnote 1 is revised to read "Regulations regarding the importation of live honeybees of the genus *Apis* are set forth in 7 CFR part 322."

**PART 322—HONEYBEES AND HONEYBEE SEMEN**

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

**Authority:** 7 U.S.C. 281; 7 CFR 2.17, 2.51, and 371.2(c).

**§ 322.1 [Amended]**

4. Section 322.1 is amended as follows:

a. Footnote 1 and the reference to footnote 1 are removed.

b. In paragraph (c), "New Zealand" is removed.

c. Paragraph (e) is redesignated as paragraph (f) and a new paragraph (e) is added to read as set forth below:

**§ 322.1 Importation of honeybees and honeybee semen.**

\* \* \* \* \*

(e) Honeybees and honeybee semen from New Zealand may transit the United States en route to another country under the following conditions:

(1) The honeybees or honeybee semen must be accompanied by a certificate issued by the New Zealand Department of Agriculture certifying that the honeybees or honeybee semen were derived in or shipped from an apiary in New Zealand;

(2) The honeybees or honeybee semen must be shipped nonstop to the United States for transit to another country;

(3) The honeybees must be contained in cages that are completely enclosed by screens with mesh fine enough to prevent the honeybees from passing through. Each pallet of cages must then be covered by an escape-proof net that is secured tightly to the pallet so that no honeybees can escape from underneath the net;

(4) The honeybees must be shipped by air through a port staffed by an inspector.<sup>1</sup> The honeybees may be transloaded from one aircraft to another at the port of arrival in the United States, provided the transloading is done under the supervision of an inspector and the area used for any storage of the honeybees between flights is within a completely enclosed building.

(5) At least 2 days prior to the expected date of arrival of honeybees at a port in the United States, the shipper must notify the APHIS Officer in Charge at the port of arrival of the following: the date of arrival and departure; the name and address of both the shipper and receiver; the quantity of queens and the number of cages of package honeybees in the shipment; and, the name of the airline carrying the shipment.

\* \* \* \* \*

<sup>1</sup> For a list of ports staffed by inspectors, contact the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, Permit Unit, 4700 River Road Unit 136, Riverdale, Maryland 20737-1236.

Done in Washington, DC, this 26th day of January 1995.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-2449 Filed 1-31-95; 8:45 am]

BILLING CODE 3410-34-M

**7 CFR Part 372**

[Docket No. 93-165-3]

RIN 0579-AA33

**National Environmental Policy Act Implementing Procedures**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** These final procedures set forth the principles and practices the Animal and Plant Health Inspection Service will follow to comply with the National Environmental Policy Act of 1969, the Council on Environmental Quality regulations, and the U.S. Department of Agriculture regulations implementing the National Environmental Policy Act. These procedures replace APHIS Guidelines Concerning Implementation of NEPA Procedures.

**EFFECTIVE DATE:** March 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert E. Pizel, Branch Chief, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January 1995. Telephone: (301) 436-8565 (Hyattsville); (301) 734-8565 (Riverdale).

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations of the President's Council on Environmental Quality (CEQ) implementing section 102(2) of the National Environmental Policy Act (hereinafter referred to as NEPA) are applicable to and binding on all agencies of the Federal Government. Pursuant to the CEQ implementing regulations, the Animal and Plant Health Inspection Service (APHIS) is implementing procedures to ensure that its planning and decisionmaking are in accordance with the policies and purposes of NEPA. The CEQ implementing regulations direct that agencies shall include, at a minimum, procedures required by 40 CFR 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), 1507.3(b)(2), and 1508.4