

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 201 and 361

[Docket No. 93-126-4]

RIN 0579-AA64

Imported Seed and Screenings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We are proposing to amend the "Imported Seed" regulations by moving the regulations to a different chapter in the Code of Federal Regulations; establishing a seed analysis program with Canada; and allowing U.S. companies that import seed for cleaning or screenings for processing to enter into compliance agreements with the Animal and Plant Health Inspection Service. These proposed changes are necessary to reflect recent amendments to the Federal Seed Act and the transfer of responsibility for the import provisions of the act from the Agricultural Marketing Service to the Animal and Plant Health Inspection Service. These proposed changes would bring the imported seed regulations into agreement with the amended Federal Seed Act, eliminate the need for sampling shipments of Canadian-origin seed at the border, and allow certain seed importers to clean seed without the direct supervision of an Animal and Plant Health Inspection Service inspector.

DATES: Consideration will be given only to comments received on or before December 3, 1996. We also will consider comments made at a public hearing to be held on November 21, 1996, from 9:00 a.m. until 12:00 noon.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93-126-4, Regulatory Analysis and Development, Policy and Program Development, Animal and

Plant Health Inspection Service, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 93-126-4. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room. The public hearing will be held on November 21, 1996, at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236, (301) 734-8896.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Federal Seed Act of 1939, as amended (FSA), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seed and screenings. Title III of the FSA, "Foreign Commerce," requires shipments of imported agricultural and vegetable seed to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The USDA's regulations implementing the provisions of the FSA are found at 7 CFR part 201; the regulations implementing the foreign commerce provisions of the FSA are found in §§ 201.101 through 201.230 (referred to below as the regulations).

A final rule published in the Federal Register on September 22, 1982 (47 FR 41725), and effective October 1, 1982, amended the delegations of authority from the Secretary of Agriculture to transfer the responsibility contained in Title III of the FSA for inspection of imported seeds from the Agricultural Marketing Service (AMS) to the Animal and Plant Health Inspection Service (APHIS).

On September 15, 1994, we published an advance notice of proposed rulemaking in the Federal Register (59 FR 47286-47287, Docket No. 93-126-1) announcing our plans to revise the FSA

regulations to reflect amendments to the FSA and the transfer of regulatory authority for Title III of the FSA from AMS to APHIS. We also noted our intention to revise the list of noxious weed seeds contained in the regulations promulgated under the FSA to include seeds of all the noxious weeds listed in the regulations promulgated under the Federal Noxious Weed Act (FNWA). We solicited comments on the advance notice of proposed rulemaking for 45 days ending October 31, 1994. By that date we received 13 comments, from seed companies and importers, State agricultural agencies, and universities. The commenters generally supported the issues raised in the advance notice of proposed rulemaking, although some did have specific concerns. Two of those concerns pertained to the testing and cleaning of imported seed and are addressed in this proposed rule. The remaining concerns were addressed in the proposed rule that is discussed in the next paragraph.

Due to concerns regarding the potential presence of noxious weed seeds in lots of imported seed, we decided to begin with an update of the noxious weed seed provisions of the FSA regulations. Therefore, on March 23, 1995, we published in the Federal Register (60 FR 15257-15260, Docket No. 93-126-2) a proposal to amend the FSA regulations by: (1) Expanding the list of noxious weed seeds to include seeds of all of the weeds listed in the FNWA regulations; (2) modifying existing tolerances for certain weed seeds in imported shipments of agricultural and vegetable seed; and (3) updating the taxonomic names of several weeds listed in the FSA regulations. After reviewing the comments submitted, we published a final rule in the Federal Register on July 12, 1995 (60 FR 35829-35831, Docket No. 93-126-3) that adopted the provisions of the proposal as a final rule.

Having completed our update of the noxious weed provisions of the regulations, we are now proposing to revise the FSA regulations to reflect amendments to the FSA and the transfer of regulatory authority for Title III of the FSA from AMS to APHIS. To reflect that change in authority, we are proposing to move the regulations from their current location in 7 CFR chapter I, which is one of the chapters in which AMS

regulations appear, to 7 CFR chapter III, where APHIS' plant-related regulations appear. As part of that proposed move, we would update the regulations to reflect amendments to the FSA and make nonsubstantive editorial changes to the arrangement and wording of the regulatory text to improve its clarity. The proposed disposition of the regulations in §§ 201.101 through 201.230 is shown in the following table:

| Current location | Proposed disposition |
|------------------|----------------------|
| 201.101 | Removed. |
| 201.102 | Removed. |
| 201.103 | Removed. |
| 201.104 | Removed. |
| 201.105 | 361.6. |
| 201.106 | Removed. |
| 201.201 | 361.1. |
| 201.202 | 361.1. |
| 201.203 | 361.1. |
| 201.204 | Removed. |
| 201.205 | Removed. |
| 201.206 | Removed. |
| 201.207 | Removed. |
| 201.208(a) | Removed. |
| 201.208(b) | 361.5. |
| 201.209 | Removed. |
| 201.210 | 361.5. |
| 201.211 | 361.5. |
| 201.212 | 361.5. |
| 201.213 | 361.5. |
| 201.214 | Removed. |
| 201.215 | Removed. |
| 201.216 | Removed. |
| 201.217 | 361.5. |
| 201.218 | 361.5. |
| 201.219 | 361.5. |
| 201.220 | Removed. |
| 201.221 | 361.4. |
| 201.221a | 361.5. |
| 201.222 | 361.3, 361.4. |
| 201.223 | 361.2. |
| 201.224 | 361.3. |
| 201.225 | 361.4, 361.8. |
| 201.226 | 361.8. |
| 201.227 | Removed. |
| 201.228 | 361.4. |
| 201.228a | Removed. |
| 201.229 | 361.4. |
| 201.230 | 361.4. |

Sections Removed From the Proposed Regulations

The Federal Seed Act Amendments of 1982 (Pub. L. 97-439) removed the requirement for the testing of imported seed to determine if it meets the pure live seed requirements of the FSA and whether the seed contains more than 2 percent by weight of common weed seeds. Once those amendments became effective, the regulations should have been amended to reflect the removal of those statutory requirements, but that did not occur. Therefore, as part of this proposed rule, we would remove § 201.102, "Pure live seed;" § 201.104,

"Weed seeds;" and 201.206, "Pure live seed," which is a definition of the term. Without a statutory basis for those requirements, we have no reason or authority to retain those provisions of the regulations. Similarly, we are also proposing to remove § 201.106, "Mixtures not considered adulterations," from the regulations because the 1982 amendments to the FSA also removed 7 U.S.C. 1583 (originally designated as § 303 of the FSA), which related to adulterated seed.

The 1994 Uruguay Round Agreements Act (Pub. L. 103-465) further amended the FSA by removing the requirement that alfalfa and red clover seeds imported from certain countries be stained. When APHIS published a final rule on April 4, 1995 (60 FR 16979, Docket No. 95-004-1) to remove the provisions of the regulations regarding staining, we neglected to remove § 201.220, "Certificate or declaration of origin." That section requires that a certificate or declaration accompany shipments of alfalfa or red clover in order to establish the country or region of origin of the seed, which is a consideration that is directly related to the now-eliminated staining requirement. Similarly, § 201.103 of the regulations should also have been removed. That section states that alfalfa seed and red clover seed of foreign origin other than the Dominion of Canada have been determined to be unadapted for general agricultural use in the United States; prior to the effective date of the changes brought about by the 1994 Uruguay Round Agreements Act, the FSA required unadapted alfalfa and red clover seed to be stained. Because the staining requirements of the FSA have been removed, we are proposing to remove §§ 201.103 and 201.220 from the regulations.

Paragraph (a) of § 201.101 of the regulations lists 48 kinds of seeds that are most often imported for purposes other than seeding and have been exempted, on that basis, from the import provisions of the regulations when imported for purposes other than seeding and accompanied by a declaration. Based on our experience with seed importations since 1982, we believe that exemption can be extended to all agricultural and vegetable seed. Therefore, we are proposing to include in the proposed new regulations an exemption for all agricultural seed and vegetable seed imported for purposes other than seeding provided that the seed is accompanied by a declaration that states the purpose for which the seed is being imported. Because all agricultural and vegetable seed would

be included in this proposed exemption, there would be no need to maintain a list of exempted seeds such as that found in § 201.101(a). Paragraph (b) of § 201.101 pertains to the pure live seed requirement that was, as discussed in a previous paragraph, removed by the Federal Seed Act Amendments of 1982. Because the list of exempted seeds would no longer be necessary and the pure live seed requirement has been removed, we are proposing to remove § 201.101 from the regulations.

Sections 201.204, 201.205, and 201.207 each contain provisions that would be unnecessary if the regulations are moved out of part 201 as proposed. Specifically, § 201.204 is a definition of *Agricultural Marketing Service* and § 201.205 is a definition of *Collector of Customs*, neither of which would be needed in regulations administered by APHIS. Section 201.207 states that definitions found in §§ 201.1 through 201.159 apply to the imported seed regulations, and such a statement would not be necessary in proposed new 7 CFR part 361, which would have a single section that contained all definitions applicable to the part. Therefore, we are proposing to remove §§ 201.204, 201.205, and 201.207 from the regulations.

Sections 201.214, 201.215, and 201.216 contain instructions for sealing, identifying, and forwarding seed samples from the port of entry to seed laboratories for analysis, test, or examination, and § 201.227 calls for the submission of a report to the collector of customs at the port of entry following the cleaning or processing of certain seed and the destruction of the refuse. Similarly, § 201.209 states that the collector of customs shall, upon request, draw and forward samples of all screenings imported or offered for importation. Because, for the reasons explained below, customs officers would no longer be collecting samples of seed or screenings, those instructions would no longer be necessary. Further, APHIS inspectors already possess the necessary equipment, forms, and knowledge to draw and forward seed samples. Therefore, we are proposing to remove §§ 201.209, 201.214, 201.215, 201.216, and 201.227 from the regulations.

Changes in the Regulations

Section 201.105, "Noxious weed seeds," of the regulations would become § 361.6 in the proposed new regulations. The noxious weeds listed in that section would remain the same, but we are proposing to adjust the format of the list. Currently, seeds with tolerances applicable to their introduction are

identified on the list by a superscript numeral one. In proposed new § 361.6, seeds without tolerances would be listed in paragraph (a)(1), and seeds with tolerances would be listed in paragraph (a)(2). We believe that listing each category of seeds separately would make both lists clearer and easier to use. Proposed new § 361.6 would also include portions of paragraph (b) of § 201.51, "Inert matter"; that paragraph lists categories of noxious weed seeds that are considered to be inert matter and thus would not be counted as weed seeds. In duplicating that text, however, we would include only those categories that apply directly to the noxious weeds listed in proposed § 361.6(a); those provisions of § 201.51(b) that apply to common weeds or other plants not listed as noxious weeds would not be carried over into proposed new § 361.6(c).

The definitions found in §§ 201.201 through 201.203—*agricultural seeds, vegetable seeds, and screenings*—would be moved intact to proposed new § 361.1, "Definitions." In addition, we would also carry over six other definitions from § 201.2 of the FSA regulations that apply to the regulation of imported seed: *Coated seed, declaration, hybrid, lot of seed, mixture, and person*. Seven other terms included in proposed § 361.1—*Administrator, Animal and Plant Health Inspection Service (APHIS), and APHIS inspector, import, 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 that are applicable to the proposed new regulations. Finally, we would include definitions for five additional terms in proposed § 361.1: *Pelleted seed, kind, variety, registered seed technologist, and official seed analyst*.

We would define *pelleted seed* as "seed coated with a substance to achieve uniformity in its size, shape, or weight in order to improve the plantability or singulation of the seed." Seed that is very small or light or that is irregularly shaped is often pelleted in order to make the seed suitable for precision planting by machine. Although pelleted seed is a subset of coated seed, importers, distributors, and other elements of the seed industry draw a distinction between coated seed and pelleted seed. We believe, therefore, that it would serve the interests of clarity to define and refer to both coated and pelleted seed in the proposed new regulations.

We are proposing to include definitions for the terms *kind* and *variety* because those terms are used throughout the proposed regulations.

Kind would be defined as "one or more related species or subspecies that singly or collectively is known by one common name, e.g., soybean, flax, or carrot."

Variety would be defined as "a subdivision of a kind which is characterized by growth, plant, fruit, seed, or other characteristics by which it can be differentiated from other sorts of the same kind." These two proposed definitions are drawn directly from the definitions for those terms found in the FSA.

We are proposing to add definitions of *registered seed technologist* and *official seed analyst* to the proposed regulations because under proposed new § 361.8, "Cleaning of imported seed and processing of certain Canadian-origin screenings," registered seed technologists and official seed analysts would be authorized to inspect representative samples of cleaned seed for noxious weed seed content and authorize, as appropriate, the cleaned seed to be released for entry into the United States. We would define *registered seed technologist* as "a registered member of the Society of Commercial Seed Technologists." *Official seed analyst* would be defined as "a registered member of the Association of Official Seed Analysts." These two societies represent seed technologists and seed analysts who serve in academic, private, and governmental capacities, and we are confident that the registered members of these societies possess the skills and knowledge necessary to accurately and reliably inspect cleaned seed for noxious weed seed content.

Paragraph (a) of § 201.208, "Seed," duplicates the list found in § 201.101 of seeds that must be sampled only when imported for seeding purposes. As discussed above, we are proposing to exempt all vegetable seed and agricultural seed imported for purposes other than seeding from the sampling requirement and other import provisions of the regulations. With that proposed exemption in place, there would be no need to maintain the lists found in §§ 201.101 and 201.208(a). Earlier in this document, we proposed to remove § 201.101 from the regulations; we are likewise proposing to remove § 201.208(a) from the regulations. The provisions of § 201.208(b), which relate to the sampling and testing of small lots of imported seed, would be moved to proposed new § 361.5(a)(2).

With the exception of paragraph (e), we are proposing to move the provisions of § 201.210, "Method of sampling," to proposed new § 361.5, "Sampling of seeds." The provisions of §§ 201.211

through 201.213 and §§ 201.217 through 201.219 would be moved to proposed new § 361.5 as well. Paragraph (e) of § 201.210, which would be omitted, states that a quantity of seed designated as one lot shall be regarded as such for sampling purposes only if every portion or bag of seed in the quantity is uniform within permitted tolerances as to percentage of pure seed, percentage of germination and hard seed, percentage of weed seeds, and the rate of occurrence of noxious weed seed. We are proposing to remove that paragraph from the regulations because, as discussed above, purity, germination, and the presence of common weed seeds are no longer considerations that apply to imported seed. With regard to the rate of occurrence of noxious weed seed, that rate cannot be accurately determined until after the seed has been analyzed, so it cannot realistically be a consideration in determining the uniformity of a quantity of seed for sampling purposes.

The provisions of § 201.221, "Exemptions," with the exception of paragraph (d), would be moved to proposed new § 361.4. Paragraph (d) exempts seed for seed production from the prohibition against importing seed that is adulterated or unfit for seeding purposes due to low pure live seed or is required to be stained. As discussed previously, staining and pure live seed content are no longer applicable to the imported seed regulations. Therefore, we are proposing to remove § 201.221(d) from the regulations.

Section 201.221a, "Table 5," would be moved to proposed new § 361.5; the table would be expanded by adding, from table 1 in § 201.46 of the FSA regulations, the minimum weights of working samples for noxious weed seed examinations. The need for noxious weed seed examinations applies to both the importation and interstate movement of seeds, so we are proposing to copy the applicable information in § 201.46 and include it in the proposed new regulations.

Section 201.222, "Declaration of purpose and labeling as to kind, variety, hybrid, and treatment," would, with the exception of paragraphs (a) and (d), be carried over to the proposed new regulations; § 201.222(c) would be moved to proposed § 361.4(b), and § 201.222(e) and (f) would be moved to proposed § 361.3(b). (Paragraph (b) of § 201.222 in the current regulations is reserved, i.e., contains no regulatory text.) Section 201.33, which is among the interstate commerce provisions of the FSA regulations, contains instructions and exceptions for labeling containers of seed. Because those

provisions apply to imported seed as well, we would copy those provisions into paragraphs (c) and (d) of proposed new § 361.3.

We are proposing to remove paragraph (a) of § 201.222 because it contains a list of certain seeds that must be accompanied at the time of importation by a statement setting forth the purpose for which the seeds are being imported, the statement serving to identify whether the seeds are being imported for seeding purposes and are thus subject to the regulations. That list would not be necessary in the proposed new regulations because all imported agricultural and vegetable seed would have to be accompanied by such a statement, and all agricultural and vegetable seed imported for seeding purposes would be subject to the regulations. Paragraph (d) of § 201.222 would be removed because it relates to the collector of customs notifying the USDA when the nature of a declaration is changed; that provision would not be necessary under the proposed new regulations because, as explained below, the collector of customs would no longer be responsible for inspecting or sampling imported seed or screenings.

Because AMS does not routinely assign its personnel to ports of entry, AMS could not have adequately enforced the import provisions of the FSA without the assistance of the Customs Service, which inspected and sampled imported seed and screenings offered for entry into the United States under joint AMS/Customs Service regulations. Since the responsibility for the import provisions of the FSA were transferred to APHIS, which does have personnel assigned to ports of entry, the assistance of Customs officers has been routinely necessary only at the smaller border crossings along the U.S./Canadian border that are staffed only by Customs personnel. If, as proposed in this document, all Canadian-origin seed is required to be accompanied by a certificate of analysis issued in Canada, the role of Customs officers with regard to imported seed would be reduced even further.

Section 201.223 would be moved to proposed § 361.2(d), and § 201.224 would be moved to proposed § 361.4(a)(3). The provisions of §§ 201.225, 201.226, and 201.228 would also be moved to the proposed new regulations, but in each section the provisions relating to reimbursement of Government expenses would be separated from the provisions relating to the supervision of cleaning of seed, destruction of refuse, and correction of labeling. The expense-related provisions would be moved to proposed new

§ 361.10, "Costs and charges"; the provisions related to the cleaning of seed and destruction of refuse would be moved to proposed new § 361.8, "Cleaning of imported seed and processing of certain Canadian-origin screenings," and the provisions related to correction of labeling would be moved to proposed § 361.4(b)(3). Proposed §§ 361.8 and 361.10 are explained in greater detail below.

Section 201.228a, "Declaration of labeling," would be removed from the regulations. We are proposing to remove that section because, as discussed previously, the proposed new regulations would contain a declaration requirement in § 361.3. The provisions of § 201.228a regarding seed purity, germination, and hard seeds would be omitted because, as discussed above, those considerations no longer apply to imported seed.

Finally, the provisions of § 201.229 would be moved to proposed § 361.4(b)(2), and the provisions of § 201.230(a) would be moved to proposed § 361.4(b)(1). Paragraph (b) of § 201.230 relates to the drawing of samples by the collector of customs and would, therefore, be removed from the regulations for the reasons discussed above; the reimbursement-related provisions that comprise § 201.230(c) would be moved to proposed § 361.10.

Certificate of Analysis for Canadian Seed

We are proposing to initiate a seed import program with Canada under which all Canadian-grown seed shipments imported into the United States would have to be accompanied by a certificate of analysis issued by Agriculture and Agri-Food Canada. The certificate would confirm that the seed in each lot had been analyzed for noxious weed seed content at the issuing laboratory and, if the seed was being imported for seeding (planting) purposes, the certificate would confirm that the seed met the noxious weed seed tolerances of 7 CFR 361.6 (the section of the amended regulations dealing with noxious weed seeds). If the seed was being imported for cleaning, the certificate would have to name the kinds of noxious weed seeds that were to be removed from the lot of seed.

Under the proposed program, we would also accept certificates that had been issued by an accredited laboratory designated by the Canadian agriculture minister pursuant to Section 14 of the Canadian Agricultural Products Act; such accredited laboratories operate under the authority of an accredited seed analyst.

This proposed certificate requirement would not apply to seed that originated in a country other than Canada that was offered for entry into the United States at a Canadian border port; such seed would still have to be sampled at the port of entry.

One of the commenters responding to our September 1994 advance notice of proposed rulemaking was concerned that the testing in Canada would be conducted on samples drawn from bulk bins prior to the packaging of individual lots of seed; such a process, he feared, would result in samples that were not representative of the seed in each lot. This proposed rule, however, makes it clear that each lot would have to be sampled and analyzed for noxious weed seed content.

Because a noxious weed seed examination would have already been conducted, Canadian-origin seed entering the United States with a certificate of analysis would be exempted from the sampling requirements of the regulations. Because only certificates issued by the Canadian government or an accredited and officially recognized laboratory would be accepted, this proposed change, which has the endorsement of Agriculture and Agri-Food Canada, would facilitate the importation of Canadian-origin seed and reduce the workload on APHIS inspectors at ports of entry along the U.S./Canadian border without increasing the risk of noxious weed seeds entering the United States in shipments of seed.

Cleaning and Processing of Imported Seed and Screenings

As noted above, we are proposing to move the provisions of § 201.225 that allow for the cleaning of imported seed found to contain noxious weed seeds at a level higher than tolerances permit. Under the current regulations, the cleaning of the seeds must be accomplished under the supervision of an employee or authorized agent of the USDA; similarly, under § 201.226, the refuse from that cleaning must be destroyed under the supervision of an employee or authorized agent of the USDA. Although the proposed regulations would continue to provide for USDA supervision of those activities, we are proposing to give companies in the United States the option of entering into a compliance agreement to facilitate the cleaning of imported seed. Persons wishing to enter into a compliance agreement could obtain compliance agreement forms from APHIS without charge.

As presented in our September 1994 advance notice of proposed rulemaking,

this proposed compliance agreement program would have been limited to importers wishing to import seed from Canada for cleaning. One of the commenters responding to that advance notice of proposed rulemaking urged us not to restrict the program to Canadian seed, noting that significant amounts of seed are commonly imported from elsewhere in the world for cleaning and packaging. We agree with that commenter; thus, the program described in this proposed rule would allow a company that imports seed for cleaning from a country other than Canada to enter into a compliance agreement with APHIS.

Compliance agreements would also play a role in another aspect of the proposed regulations. The FSA and the regulations allow the importation of screenings from seeds of wheat, oats, barley, rye, buckwheat, field corn, sorghum, broomcorn, flax, millet, proso, soybeans, cowpeas, field peas, or field beans as long as the screenings are not being imported for seeding (planting) purposes and the declaration accompanying the screenings indicates that the screenings are being imported for processing or manufacturing purposes. In this document, we are proposing to allow the importation from Canada of screenings from other kinds of seeds if the screenings are consigned to a processing facility that is operating under a compliance agreement. Such processing facilities utilize screenings to produce animal feed, and the process used to produce the feed—usually an extrusion process in which the screenings are heated and pelletized—is sufficient to devitalize any live seed that might be present in the screenings, which reduces to an insignificant level any risk that the processed screenings would carry viable noxious weed seeds.

The compliance agreement would be a written agreement between a person engaged in the business of cleaning imported seed or processing screenings, the State in which the business operates, and APHIS. In the compliance agreement, the person would agree to comply with the applicable provisions of the regulations and any additional conditions included in the compliance agreement. With regard to the cleaning of seed, the agreement would eliminate the need for an APHIS inspector to be present to supervise the cleaning of seed and destruction of refuse; rather, an APHIS inspector would make spot checks to ensure that the conditions of the compliance agreement were being observed. With regard to the processing of screenings, the agreement would help ensure that the business uses processing methods that are adequate to devitalize

any live seed that may be contained in the screenings.

The compliance agreement would provide that if an APHIS inspector found that the person who entered into the compliance agreement was violating the terms of the agreement, the APHIS inspector could cancel the compliance agreement, either orally or in writing. If the cancellation was oral, it would be confirmed in writing as promptly as possible. Any person whose compliance agreement had been canceled could appeal the decision to the Administrator, who would grant or deny the appeal, in writing, as soon as circumstances permitted. A hearing would be held if there was a conflict as to any material fact concerning the cancellation or the appeal.

While the proposed regulations would allow seed to be cleaned under APHIS supervision or under a compliance agreement, we would continue to require the seed to be retested for noxious weed content before it is allowed entry into the United States. In the proposed regulations, we would allow representative samples of the seed to be examined by a registered seed technologist or an official seed analyst, who would be eligible to issue reports of noxious weed examinations for cleaned seed. Allowing qualified personnel outside of USDA to conduct such examinations would facilitate the release of cleaned seed and reduce the workload on USDA seed analysts while ensuring that a thorough examination of the cleaned seed is conducted.

Coated or Pelleted Seed

We are proposing to prohibit the importation of coated or pelleted seed that does not meet certain conditions. For Canadian-origin coated or pelleted seed, proposed § 361.7(b) would require that the seed be analyzed in Canada prior to being coated or pelleted; the findings of that analysis with regard to the identity and noxious weed content of the seed would have to be recorded on the certificate of analysis required for Canadian-origin seed under proposed § 361.7. For coated or pelleted seed from countries other than Canada, proposed § 361.2(c) would require that the seed be accompanied by an officially drawn and sealed sample of the seed that was drawn before the seed was coated or pelleted.

Without an officially drawn sample or a certificate of analysis, coated or pelleted seed would not be eligible for importation because the coating would render the seed uninspectable, in that the identity of the seed could not be readily confirmed, the accuracy of the labeling could not be evaluated, and the

noxious weed seed content of the seed could not be determined.

Recordkeeping

In § 361.9 of the proposed regulations, we would carry over the recordkeeping requirements of § 201.4 of the FSA regulations. Although the FSA regulations apply those requirements only to seeds in interstate commerce, we believe recordkeeping with regard to imported seed would be necessary to allow APHIS to trace the origin of seeds or screenings, if necessary, and to monitor the efficacy of noxious weed examinations and cleaning. We do not believe that the proposed recordkeeping requirements would place a burden on seed companies because such companies already keep such records for internal purposes and to comply with the interstate provisions of FSA regulations administered by the AMS. Therefore, we are proposing to require that each person importing agricultural seed or vegetable seed under this part would have to maintain a record, including copies of the declaration and labeling required under the regulations and a sample of seed, for each lot of seed imported. Except for the seed sample, which could be discarded 1 year after the entire lot represented by the sample had been disposed of by the person who imported the seed, the records would have to be maintained for 3 years following the importation. The required sample of vegetable seed and agricultural seed would have to be at least equal in weight to the sample size prescribed for noxious weed seed examination in table 1 of proposed § 361.4. An APHIS inspector would be allowed to inspect and copy the records during normal business hours. These proposed requirements are equivalent to those found in § 201.4 of the FSA regulations and would serve the same purpose.

Costs and Charges

Proposed § 361.10 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. Further, under the authority of the FSA, proposed § 361.10 also provides that any costs or charges incurred in connection with the supervision by an APHIS inspector of cleaning, labeling, or destruction of seed, screenings, or refuse under the proposed regulations would have to be

reimbursed by the owner or consignee of the seed or screenings.

Public Hearing

As required by 7 U.S.C. 1592(c), APHIS will host a public hearing to provide interested persons a full opportunity to present their views regarding this proposal. The hearing will be held on November 21, 1996, at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be asked to sign in, listing their names and organizations.

The public hearing will begin at 9:00 a.m. local time and is scheduled to end at 12:00 noon local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearing, except to clarify or explain provisions of the proposed rule.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to amend the "Imported Seed" regulations by moving the regulations to a different chapter in the Code of Federal Regulations, establishing a seed analysis program with Canada, and allowing U.S. companies that import seed for cleaning or screenings for processing to enter into compliance agreements with APHIS. With these proposed changes, the regulations would reflect recent amendments to the FSA and the transfer of responsibility for the import provisions of the act from the AMS to APHIS, eliminate the need for sampling

shipments of Canadian-origin seed at the border, and allow certain seed importers to clean seed without the direct supervision of an APHIS inspector.

No economic impact is expected to result from shifting the regulations to a different chapter in the Code of Federal Regulations. However, the elimination of the requirement that shipments of Canadian-origin seed be sampled at the border is expected to result in savings to APHIS. Currently, at the Canadian border, APHIS relies on the U.S. Customs Service to draw samples from shipment of imported seed. Customs Service inspectors mail the seed samples to APHIS' Seed Examination Facility (SEF) in Beltsville, MD, for testing. The proposed rule would require that all shipments of Canadian-origin agricultural or vegetable seed be accompanied by a certificate of analysis issued by Agriculture and Agri-Food Canada or by a private seed laboratory accredited by Agriculture and Agri-Food Canada; the certificate of analysis would preclude the need for sampling and testing those shipments of Canadian-origin seed. The certificate of analysis would confirm the seed shipment meets the noxious weed tolerances and labeling requirements of the FSA and the regulations. Under the provisions of the proposed rule, the cost of the analysis and subsequent certification would be borne by the owner or exporter of the seed, so there would be a reduction in the sampling and testing costs currently borne by APHIS. It is estimated that APHIS would save over \$103,000 annually in salary and related expenditures associated with the testing of Canadian-origin seed.

Currently, Canada's agricultural regulations allow seed from the United States to move into the commerce of Canada without testing if a certificate of analysis from an approved American laboratory accompanies the seed. The provisions of this proposed rule would allow for a reciprocal seed import certification program with Canada. This reciprocity is important in facilitating trade, given the volume of seed trade between the two countries. Imports of field and garden seeds from Canada represent 80 percent of total U.S. seed imports; from 1992 to 1994, imports of the regulated agricultural and vegetable seeds from Canada into the United States averaged 107,270 tons per year, with an average value of \$63.059 million. From fiscal year 1989 to fiscal year 1993, the number of seed shipments sampled increased from 2,451 to 3,615 shipments per year, an increase of 47.5 percent; over the same period, SEF tested an average of 2,907

seed samples per year. In fiscal years 1994 and 1995, approximately 5,000 Canadian seed samples were tested. Only 3 percent of Canadian seed shipments were refused admission for noxious weed content.

The SEF botanist currently spends approximately 90 percent of his time in testing Canadian-origin seed for noxious weed seeds, while his assistant spends about 50 percent of his time on this task. For both the botanist and his assistant, the time spent testing Canadian seed reduces the amount of time they can devote to seed identification and other responsibilities. In terms of salaries and benefits, the costs associated with the SEF's testing of Canadian seed are estimated to exceed \$100,000 annually. Our proposal to require that Canadian-origin seed be certified prior to entry into the United States would eliminate the need for the routine testing of Canadian-origin seed and thus eliminate the costs associated with that testing. The time and costs previously spent on testing Canadian seed would then be shifted into the SEF's other areas of responsibility.

The proposed rule would also realize savings in salary for the time spent by APHIS or State inspectors supervising the cleaning of seed lots refused admission due to noxious weed seed content. In fiscal year 1995, 61 seed shipments were refused entry due to noxious weed seed content above tolerances. An inspector spends an average of about 4 hours in supervising the cleaning of each refused shipment. The savings in the inspector's supervision time in this activity is estimated as \$1,262.

This proposed rule would also allow companies that import uncleaned seed for reconditioning and resale to enter into a compliance agreement with APHIS, which would likely yield a savings to APHIS in inspection time since only periodic inspections of these companies would be necessary to ensure compliance with the conditions of the agreement. Currently, APHIS employs a contractor who is responsible for supervising the cleaning of the adulterated seed imported by two companies in Idaho. In fiscal year 1995, 48 lots of seed imported by those two companies required cleaning supervision; a company operating under a compliance agreement would not require supervision for every lot of seed imported for cleaning. Thus, we expect there would be an estimated \$1,664 annual savings in salary and benefits as a result of seed-cleaning companies entering into compliance agreements with APHIS.

In total, we expect an estimated annual reduction of approximately \$103,000 in the costs associated with the sampling and testing of Canadian origin seed and the supervision of seed cleaning.

The Regulatory Flexibility Act requires that the Agency specifically consider the impact of proposed regulations on small U.S. businesses. The proposed rule is expected to impact exporters of Canadian-origin seed, the majority of which—over 95 percent—are Canadian businesses. The cost of obtaining a certificate of analysis from a Canadian government or private laboratory is estimated to range from \$13.00 to \$58.00 per lot, depending on the type of seed to be analyzed, or an average of \$35 per lot. The cost is the same regardless of the size of the lot, which can range from 50 to 50,000 pounds. Based upon fiscal year 1995 figures, there would be approximately 6,000 seed shipments per year from Canada that would require certification as a condition of importation into the United States. For the majority of shipments, the cost of the certification would not represent an additional expense because much of the seed likely would have been tested anyway to meet the requirements of the exporting company's contracts with its importing customers. Nevertheless, the cost of a certificate is small in comparison to the average value of a seed shipment (which is typically worth thousands of dollars) and should not, therefore, impose a significant economic burden on Canadian seed exporters, large or small. For this reason, any cost that is passed on to U.S. buyers of Canadian seed is likewise estimated to be small.

Less than 2 percent of Canadian seed imports are transacted by individual farms. Individual farms located near the U.S.-Canadian border typically import small amounts of Canadian seed to be used directly on farms. While the exact number of these entities is not known, it is expected that the impact to these individuals would be small because seed sold in such small quantities is, in almost all cases, already analyzed and certified prior to its entry into the United States.

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

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 93-126-4. Please send a copy of your comments to: (1) Docket No. 93-126-4, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to amend the "Imported Seed" regulations by moving the regulations to a different chapter in the Code of Federal Regulations; establishing a seed analysis program with Canada; and allowing U.S. companies that import seed for cleaning or screenings for processing to enter into compliance agreements with APHIS. These proposed changes would bring the imported seed regulations into agreement with the amended FSA, eliminate the need for sampling shipments of Canadian-origin seed at the border, and allow certain seed importers to clean seed without the direct supervision of an APHIS inspector.

We are seeking OMB approval to use the following documents in connection with the information collection activities that would occur under the proposed regulations described in this document:

Seed Analysis Certificate (PPQ-925): Canadian-grown seed shipments imported into the United States would have to be accompanied by a certificate of analysis issued by Agriculture and Agri-Food Canada. The certificate would confirm that the seed in each lot had been analyzed for noxious weed seed content at the issuing laboratory and, if the seed was being imported for seeding (planting) purposes, the certificate would confirm that the seed

met the noxious weed seed tolerances of proposed § 361.6. If the seed was being imported for cleaning, the certificate would have to name the kinds of noxious weed seeds that were to be removed from the lot of seed. Under the proposed program, we would also accept certificates that had been issued by an accredited laboratory designated by the Canadian agriculture minister pursuant to Section 14 of the Canadian Agricultural Products Act.

Compliance Agreement (PPQ 519): We would allow any person engaged in the business of cleaning imported agricultural or vegetable seed to enter into a compliance agreement with APHIS, which would remove the need for the full-time presence of an APHIS inspector at the cleaning facility. In addition, we would require that any person engaged in the business of or processing certain screenings from Canada enter into a compliance agreement with APHIS. These agreements would be signed by the person engaged in the business, the State in which the business operates, and APHIS. The agreement would specify various safeguards necessary to ensure safe destruction of noxious weed seeds and plant pests; require resampling of cleaned seed to determine enterability; and state that APHIS inspectors must be allowed access to the facility to monitor compliance with our regulations.

Written Appeal of Cancellation or Denial: Any person whose compliance agreement has been canceled or whose request to enter into a compliance agreement has been denied may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation or denial.

Recordkeeping: We believe recordkeeping with regard to imported seed would be necessary to allow APHIS to trace the origin of seeds or screenings, if necessary, and to monitor the efficacy of noxious weed examinations and cleaning. Seed importers already keep such records for internal purposes and to comply with the interstate provisions of FSA regulations administered by AMS. Therefore, we are proposing to require that each person importing agricultural seed or vegetable seed under the proposed regulations would have to maintain a record, including copies of the declaration and labeling required under the regulations and a sample of seed, for each lot of seed imported. Except for the seed sample, which could be discarded 1 year after the entire lot represented by the sample had been disposed of by the person who imported the seed, the records would have to be

maintained for 3 years following the importation.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our new information collection. We need this outside input to help us accomplish the following:

Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the information collection on those who are to respond, (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .0333 hours per response.

Respondents: Seed importers, seed exporters, operators of facilities for cleaning seed or processing screenings.

Estimated number of respondents: 195.

Estimated number of responses per respondent: 2,094.

Estimated total annual burden on respondents: 6,913.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

7 CFR Part 201

Advertising, Agricultural commodities, Imports, Labeling, Reporting and recordkeeping requirements, Seeds, Vegetables.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, title 7, chapters I and III, of the Code of Federal Regulations would be amended as follows:

PART 201—FEDERAL SEED ACT REGULATIONS

1. The authority citation for part 201 would continue to read as follows:

Authority: 7 U.S.C. 1592.

§ 201.38 [Amended]

2. Section 201.38 would be amended by removing the words “§§ 201.208 and 201.209” and adding the words “§ 361.4 of this title” in their place.

§§ 201.101 through 201.230 [Removed]

3. In 7 CFR part 201, §§ 201.101 through 201.230 would be removed.

4. A new 7 CFR part 361 would be added to read as follows:

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

Sec.

361.1 Definitions.

361.2 General restrictions on the importation of seed and screenings.

361.3 Declarations and labeling.

361.4 Inspection at the port of first arrival.

361.5 Sampling of seeds.

361.6 Noxious weed seeds.

361.7 Special provisions for Canadian-origin seed and screenings.

361.8 Cleaning of imported seed and processing of certain Canadian-origin screenings.

361.9 Recordkeeping.

361.10 Costs and charges.

Authority: 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.2(c).

§ 361.1 Definitions.

Terms used in the singular form in this part shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this part, shall be construed, respectively, to mean:

Administrator. The Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other individual to whom the Administrator delegates authority to act in his or her stead.

Agricultural seed. The following kinds and varieties of grass, forage, and field crop seed that are used for seeding purposes in the United States:

Agrotricum—x *Agrotriticum* Ciferri and Giacom.

Alfalfa—*Medicago sativa* L.

Alfilaria—*Erodium cicutarium* (L.) L'Her.

Alyceclover—*Alysicarpus vaginalis* (L.) DC.

Bahiagrass—*Paspalum notatum*

Fluegge

Barley—*Hordeum vulgare* L.

Barrelclover—*Medicago truncatula* Gaertn.

Bean, adzuki—*Vigna angularis*

(Willd.) Ohwi and Ohashi

Bean, field—*Phaseolus vulgaris* L.

Bean, mung—*Vigna radiata* (L.)

Wilczek

Beet, field—*Beta vulgaris* L. subsp.

vulgaris

Beet, sugar—*Beta vulgaris* L. subsp. *vulgaris*

Beggarweed, Florida—*Desmodium tortuosum* (Sw.) DC.

Bentgrass, colonial—*Agrostis capillaris* L.

Bentgrass, creeping—*Agrostis stolonifera* L. var. *palustris* (Huds.)

Farw.

Bentgrass, velvet—*Agrostis canina* L.

Bermudagrass—*Cynodon dactylon*

(L.) Pers. var. *dactylon*

Bermudagrass, giant—*Cynodon dactylon* (L.) Pers. var. *aridus* Harlan and de Wet

Bluegrass, annual—*Poa annua* L.

Bluegrass, bulbous—*Poa bulbosa* L.

Bluegrass, Canada—*Poa compressa* L.

Bluegrass, glaucantha—*Poa glauca*

Vahl

Bluegrass, Kentucky—*Poa pratensis*

L.

Bluegrass, Nevada—*Poa secunda* J.S.

Presl

Bluegrass, rough—*Poa trivialis* L.

Bluegrass, Texas—*Poa arachnifera*

Torr.

Bluegrass, wood—*Poa nemoralis* L.

Bluejoint—*Calamagrostis canadensis* (Michx.) P. Beauv.

Bluestem, big—*Andropogon gerardii*

Vitm. var. *gerardii*

Bluestem, little—*Schizachyrium*

scoparium (Michx.) Nash

Bluestem, sand—*Andropogon hallii*

Hack.

Bluestem, yellow—*Bothriochloa ischaemum* (L.) Keng.

Bottlebrush-squirreltail—*Elymus*

elymoides (Raf.) Swezey

Brome, field—*Bromus arvensis* L.

Brome, meadow—*Bromus*

biebersteinii Roem. and Schult.

Brome, mountain—*Bromus*

marginatus Steud.

Brome, smooth—*Bromus inermis*

Leyss.

Broomcorn—*Sorghum bicolor* (L.)

Moench

Buckwheat—*Fagopyrum esculentum*

Moench

Buffalograss—*Buchloe dactyloides*

(Nutt.) Engelm.

Buffelgrass—*Cenchrus ciliaris* L.

Burclover, California—*Medicago*

polymorpha L.

Burclover, spotted—*Medicago arabica*

(L.) Huds.

Burnet, little—*Sanguisorba minor*

Scop.

- Buttonclover—*Medicago orbicularis* (L.) Bartal.
 Canarygrass—*Phalaris canariensis* L.
 Canarygrass, reed—*Phalaris arundinacea* L.
 Carpetgrass—*Axonopus fissifolius* (Raddi) Kuhlman.
 Castorbean—*Ricinus communis* L.
 Chess, soft—*Bromus hordeaceus* L.
 Chickpea—*Cicer arietinum* L.
 Clover, alsike—*Trifolium hybridum* L.
 Clover, arrowleaf—*Trifolium vesiculosum* Savi
 Clover, berseem—*Trifolium alexandrinum* L.
 Clover, cluster—*Trifolium glomeratum* L.
 Clover, crimson—*Trifolium incarnatum* L.
 Clover, Kenya—*Trifolium semipilosum* Fresen.
 Clover, ladino—*Trifolium repens* L.
 Clover, lappa—*Trifolium lappaceum* L.
 Clover, large hop—*Trifolium campestre* Schreb.
 Clover, Persian—*Trifolium resupinatum* L.
 Clover, red or
 Red clover, mammoth—*Trifolium pratense* L.
 Red clover, medium—*Trifolium pratense* L.
 Clover, rose—*Trifolium hirtum* All.
 Clover, small hop or suckling—*Trifolium dubium* Sibth.
 Clover, strawberry—*Trifolium fragiferum* L.
 Clover, sub or subterranean—*Trifolium subterraneum* L.
 Clover, white—*Trifolium repens* L. (also see Clover, ladino)
 Clover—(also see Alyceclover, Burclover, Buttonclover, Sourclover, Sweetclover)
 Corn, field—*Zea mays* L.
 Corn, pop—*Zea mays* L.
 Cotton—*Gossypium* spp.
 Cowpea—*Vigna unguiculata* (L.) Walp. subsp. *unguiculata*
 Crambe—*Crambe abyssinica* R.E. Fries
 Crested dogtail—*Cynosurus cristatus* L.
 Crotalaria, lance—*Crotalaria lanceolata* E. Mey.
 Crotalaria, showy—*Crotalaria spectabilis* Roth
 Crotalaria, slenderleaf—*Crotalaria brevidens* Benth. var. *intermedia* (Kotschy) Polh.
 Crotalaria, striped or smooth—*Crotalaria pallida* Ait.
 Crotalaria, sunn—*Crotalaria juncea* L.
 Crownvetch—*Coronilla varia* L.
 Dallisgrass—*Paspalum dilatatum* Poir.
 Dichondra—*Dichondra repens* Forst. and Forst. f.
 Dropseed, sand—*Sporobolus cryptandrus* (Torr.) A. Gray
 Emmer—*Triticum dicoccon* Schrank
 Fescue, chewings—*Festuca rubra* L. subsp. *commutata* Gaud.
 Fescue, hair—*Festuca tenuifolia* Sibth.
 Fescue, hard—*Festuca brevipila* Tracey
 Fescue, meadow—*Festuca pratensis* Huds.
 Fescue, red—*Festuca rubra* L. subsp. *rubra*
 Fescue, sheep—*Festuca ovina* L. var. *ovina*
 Fescue, tall—*Festuca arundinacea* Schreb.
 Flax—*Linum usitatissimum* L.
 Galletagrass—*Hilaria jamesii* (Torr.) Benth.
 Grama, blue—*Bouteloua gracilis* (Kunth) Steud.
 Grama, side-oats—*Bouteloua curtipendula* (Michx.) Torr.
 Guar—*Cyamopsis tetragonoloba* (L.) Taub.
 Guinea grass—*Panicum maximum* Jacq. var. *maximum*
 Hardinggrass—*Phalaris stenoptera* Hack.
 Hemp—*Cannabis sativa* L.
 Indiangrass, yellow—*Sorghastrum nutans* (L.) Nash
 Indigo, hairy—*Indigofera hirsuta* L.
 Japanese lawnggrass—*Zoysia japonica* Steud.
 Johnsongrass—*Sorghum halepense* (L.) Pers.
 Kenaf—*Hibiscus cannabinus* L.
 Kochia, forage—*Kochia prostrata* (L.) Schrad.
 Kudzu—*Pueraria montana* (Lour.) Merr. var. *lobata* (Willd.) Maesen and S. Almeida
 Lentil—*Lens culinaris* Medik.
 Lespedeza, Korean—*Kummerowia stipulacea* (Maxim.) Makino
 Lespedeza, sericea or Chinese—*Lespedeza cuneata* (Dum.-Cours.) G. Don
 Lespedeza, Siberian—*Lespedeza juncea* (L. f.) Pers.
 Lespedeza, striate—*Kummerowia striata* (Thunb.) Schindler
 Lovegrass, sand—*Eragrostis trichodes* (Nutt.) Wood
 Lovegrass, weeping—*Eragrostis curvula* (Schrad.) Nees
 Lupine, blue—*Lupinus angustifolius* L.
 Lupine, white—*Lupinus albus* L.
 Lupine, yellow—*Lupinus luteus* L.
 Manilagrass—*Zoysia matrella* (L.) Merr.
 Meadow foxtail—*Alopecurus pratensis* L.
 Medic, black—*Medicago lupulina* L.
 Milkvetch or cicer milkvetch—*Astragalus cicer* L.
 Millet, browntop—*Brachiaria ramosa* (L.) Stapf
 Millet, foxtail—*Setaria italica* (L.) Beauv.
 Millet, Japanese—*Echinochloa frumentacea* Link
 Millet, pearl—*Pennisetum glaucum* (L.) R. Br.
 Millet, proso—*Panicum miliaceum* L.
 Molassesgrass—*Melinis minutiflora* Beauv.
 Mustard, black—*Brassica nigra* (L.) Koch
 Mustard, India—*Brassica juncea* (L.) Czernj. and Coss.
 Mustard, white—*Sinapis alba* L.
 Napiergrass—*Pennisetum purpureum* Schumacher.
 Needlegrass, green—*Stipa viridula* Trin.
 Oat—*Avena byzantina* C. Koch, A. *sativa* L., A. *nuda* L.
 Oatgrass, tall—*Arrhenatherum elatius* (L.) J.S. Presl and K.B. Presl
 Orchardgrass—*Dactylis glomerata* L.
 Panicgrass, blue—*Panicum antidotale* Retz.
 Panicgrass, green—*Panicum maximum* Jacq. var. *trichoglume* Robyns
 Pea, field—*Pisum sativum* L.
 Peanut—*Arachis hypogaea* L.
 Poa trivialis—(see Bluegrass, rough)
 Rape, annual—*Brassica napus* L. var. *annua* Koch
 Rape, bird—*Brassica rapa* L. subsp. *rapa*
 Rape, turnip—*Brassica rapa* L. subsp. *silvestris* (Lam.) Janchen
 Rape, winter—*Brassica napus* L. var. *biennis* (Schubl. and Mart.) Reichb.
 Redtop—*Agrostis gigantea* Roth
 Rescuegrass—*Bromus catharticus* Vahl
 Rhodesgrass—*Chloris gayana* Kunth
 Rice—*Oryza sativa* L.
 Ricegrass, Indian—*Oryzopsis hymenoides* (Roem. and Schult.) Ricker
 Roughpea—*Lathyrus hirsutus* L.
 Rye—*Secale cereale* L.
 Rye, mountain—*Secale strictum* (K.B. Presl) K.B. Presl subsp. *strictum*
 Ryegrass, annual or Italian—*Lolium multiflorum* Lam.
 Ryegrass, intermediate—*Lolium x hybridum* Hausskn.
 Ryegrass, perennial—*Lolium perenne* L.
 Ryegrass, Wimmera—*Lolium rigidum* Gaud.
 Safflower—*Carthamus tinctorius* L.
 Sagewort, Louisiana—*Artemisia ludoviciana* Nutt.
 Sainfoin—*Onobrychis viciifolia* Scop.
 Saltbush, fourwing—*Atriplex canescens* (Pursh) Nutt.
 Sesame—*Sesamum indicum* L.
 Sesbania—*Sesbania exaltata* (Raf.) A.W. Hill
 Smilo—*Piptatherum miliaceum* (L.) Coss

Sorghum—*Sorghum bicolor* (L.) Moench
 Sorghum alnum—*Sorghum x alnum* L. Parodi
 Sorghum-sudangrass—*Sorghum x drummondii* (Steud.) Millsp. and Chase
 Sorgrass—*Rhizomatous* derivatives of a johnsongrass x sorghum cross or a johnsongrass x sudangrass cross
 Southernpea—(See Cowpea)
 Sourclover—*Melilotus indicus* (L.) All.
 Soybean—*Glycine max* (L.) Merr.
 Spelt—*Triticum spelta* L.
 Sudangrass—*Sorghum x drummondii* (Steud.) Millsp. and Chase
 Sunflower—*Helianthus annuus* L.
 Sweetclover, white—*Melilotus albus* Medik.
 Sweetclover, yellow—*Melilotus officinalis* Lam.
 Sweet vernalgrass—*Anthoxanthum odoratum* L.
 Sweetvetch, northern—*Hedysarum boreale* Nutt.
 Switchgrass—*Panicum virgatum* L.
 Timothy—*Phleum pratense* L.
 Timothy, turf—*Phleum bertolonii* DC.
 Tobacco—*Nicotiana tabacum* L.
 Trefoil, big—*Lotus uliginosus* Schk.
 Trefoil, birdsfoot—*Lotus corniculatus* L.
 Triticale—x *Triticosecale* Wittm. (Secale x Triticum)
 Vaseygrass—*Paspalum urvillei* Steud.
 Veldtgrass—*Ehrharta calycina* J.E. Smith
 Velvetbean—*Mucuna pruriens* (L.) DC. var. *utilis* (Wight) Burck
 Velvetgrass—*Holcus lanatus* L.
 Vetch, common—*Vicia sativa* L. subsp. *sativa*
 Vetch, hairy—*Vicia villosa* Roth subsp. *villosa*
 Vetch, Hungarian—*Vicia pannonica* Crantz
 Vetch, monantha—*Vicia articulata* Hornem.
 Vetch, narrowleaf or blackpod—*Vicia sativa* L. subsp. *nigra* (L.) Ehrh.
 Vetch, purple—*Vicia benghalensis* L.
 Vetch, woollypod or winter—*Vicia villosa* Roth subsp. *varia* (Host) Corb.
 Wheat, common—*Triticum aestivum* L.
 Wheat, club—*Triticum compactum* Host
 Wheat, durum—*Triticum durum* Desf.
 Wheat, Polish—*Triticum polonicum* L.
 Wheat, poulard—*Triticum turgidum* L.
 Wheat x Agroticum—*Triticum x Agroticum*
 Wheatgrass, beardless—*Pseudoroegneria spicata* (Pursh) A. Love
 Wheatgrass, crested or fairway crested—*Agropyron cristatum* (L.) Gaertn.

Wheatgrass, crested or standard crested—*Agropyron desertorum* (Link) Schult.
 Wheatgrass, intermediate—*Elytrigia intermedia* (Host) Nevski subsp. *intermedia*
 Wheatgrass, pubescent—*Elytrigia intermedia* (Host) Nevski subsp. *intermedia*
 Wheatgrass, Siberian—*Agropyron fragile* (Roth) Candargy subsp. *sibiricum* (Willd.) Meld.
 Wheatgrass, slender—*Elymus trachycaulus* (Link) Shinn.
 Wheatgrass, streambank—*Elymus lanceolatus* (Scribn. and J.G. Smith) Gould subsp. *lanceolatus*
 Wheatgrass, tall—*Elytrigia elongata* (Host) Nevski
 Wheatgrass, western—*Pascopyrum smithii* (Rydb.) A. Love
 Wildrye, basin—*Leymus cinereus* (Scribn. and Merr.) A. Love
 Wildrye, Canada—*Elymus canadensis* L.
 Wildrye, Russian—*Psathyrostachys juncea* (Fisch.) Nevski
 Zoysia japonica—(see Japanese lawngrass)
 Zoysia matrella—(see Manilagrass)
 Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.
 APHIS inspector. Any employee of the Animal and Plant Health Inspection Service or any other individual authorized by the Administrator to enforce this part.
 Coated Seed. Any seed unit covered with any substance that changes the size, shape, or weight of the original seed. Seeds coated with ingredients such as, but not limited to, rhizobia, dyes, and pesticides are excluded.
 Declaration. A written statement of a grower, shipper, processor, dealer, or importer giving for any lot of seed the kind, variety, type, origin, or the use for which the seed is intended.
 Hybrid. When applied to kinds or varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining two or more inbred lines; one inbred or a single cross with an open-pollinated variety; two selected clones, seed lines, varieties, or species. "Controlling the pollination" means to use a method of hybridization that will produce pure seed that is at least 75 percent hybrid seed. Hybrid designations shall be treated as variety names.
 Import. To bring into the territorial limits of the United States.
 Kind. One or more related species or subspecies that singly or collectively is known by one common name, e.g., soybean, flax, or carrot.

Lot of seed. A definite quantity of seed identified by a lot number, every portion or bag of which is uniform, within permitted tolerances, for the factors that appear in the labeling.

Mixture. Seeds consisting of more than one kind or variety, each present in excess of 5 percent of the whole.

Official seed analyst. A registered member of the Association of Official Seed Analysts.

Pelleted seed. Any seed unit covered with a substance that changes the size, shape, or weight of the original seed in order to improve the plantability or singulation of the seed.

Person. Any individual, partnership, corporation, company, society, association, receiver, trustee, or other legal entity or organized group.

Port of first arrival. The land area (such as a seaport, airport, or land border station) where a person, or a land, water, or air vehicle, first arrives after entering the United States, and where inspection of articles is carried out by APHIS inspectors.

Registered seed technologist. A registered member of the Society of Commercial Seed Technologists.

Screenings. Chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed in any way from any seeds in any kind of cleaning or processing and which contains less than 25 percent of live agricultural or vegetable seeds.

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

United States. All of the States.

Variety. A subdivision of a kind which is characterized by growth, plant, fruit, seed, or other characteristics by which it can be differentiated from other sorts of the same kind.

Vegetable seed. The seed of the following kinds and varieties that are or may be grown in gardens or on truck farms and are or may be generally known and sold under the name of vegetable seed:

Artichoke—*Cynara cardunculus* L. subsp. *cardunculus*

Asparagus—*Asparagus officinalis* Baker

Asparagusbean or yard-long bean—*Vigna unguiculata* (L.) Walp. subsp. *sesquipedalis* (L.) Verdc.

Bean, garden—*Phaseolus vulgaris* L.

Bean, lima—*Phaseolus lunatus* L.

Bean, runner or scarlet runner—

Phaseolus coccineus L.

Beet—*Beta vulgaris* L. subsp. *vulgaris*

Broadbean—*Vicia faba* L.

Broccoli—*Brassica oleracea* L. var. *botrytis* L.

Brussels sprouts—*Brassica oleracea* L. var. *gemmifera* DC.
 Burdock, great—*Arctium lappa* L.
 Cabbage—*Brassica oleracea* L. var. *capitata* L.
 Cabbage, Chinese—*Brassica rapa* L. subsp. *pekinensis* (Lour.) Hanelt
 Cabbage, tronchuda—*Brassica oleracea* L. var. *costata* DC.
 Cantaloupe—(see Melon)
 Cardoon—*Cynara cardunculus* L. subsp. *cardunculus*
 Carrot—*Daucus carota* L. subsp. *sativus* (Hoffm.) Arcang.
 Cauliflower—*Brassica oleracea* L. var. *botrytis* L.
 Celeriac—*Apium graveolens* L. var. *rapaceum* (Mill.) Gaud.
 Celery—*Apium graveolens* L. var. *dulce* (Mill.) Pers.
 Chard, Swiss—*Beta vulgaris* L. subsp. *cicla* (L.) Koch
 Chicory—*Cichorium intybus* L.
 Chives—*Allium schoenoprasum* L.
 Citron—*Citrus lanatus* (Thunb.) Matsum. and Nakai var. *citroides* (Bailey) Mansf.
 Collards—*Brassica oleracea* L. var. *acephala* DC.
 Corn, sweet—*Zea mays* L.
 Cornsalad—*Valerianella locusta* (L.) Laterrade
 Cowpea—*Vigna unguiculata* (L.) Walp. subsp. *unguiculata*
 Cress, garden—*Lepidium sativum* L.
 Cress, upland—*Barbarea verna* (Mill.) Asch.
 Cress, water—*Rorippa nasturtium-aquaticum* (L.) Hayek
 Cucumber—*Cucumis sativus* L.
 Dandelion—*Taraxacum officinale* Wigg.
 Dill—*Anethum graveolens* L.
 Eggplant—*Solanum melongena* L.
 Endive—*Cichorium endivia* L.
 Gherkin, West India—*Cucumis anguria* L.
 Kale—*Brassica oleracea* L. var. *acephala* DC.
 Kale, Chinese—*Brassica oleracea* L. var. *alboglabra* (Bailey) Musil
 Kale, Siberian—*Brassica napus* L. var. *pabularia* (DC.) Reichb.
 Kohlrabi—*Brassica oleracea* L. var. *gongylodes* L.
 Leek—*Allium porrum* L.
 Lettuce—*Lactuca sativa* L.
 Melon—*Cucumis melo* L.
 Muskmelon—(see Melon).
 Mustard, India—*Brassica juncea* (L.) Czernj. and Coss.
 Mustard, spinach—*Brassica perviridis* (Bailey) Bailey
 Okra—*Abelmoschus esculentus* (L.) Moench
 Onion—*Allium cepa* L.
 Onion, Welsh—*Allium fistulosum* L.
 Pak-choi—*Brassica rapa* L. subsp. *chinensis* (L.) Hanelt

Parsley—*Petroselinum crispum* (Mill.) A.W. Hill
 Parsnip—*Pastinaca sativa* L.
 Pea—*Pisum sativum* L.
 Pepper—*Capsicum* spp.
 Pe-tsai—(see Chinese cabbage).
 Pumpkin—*Cucurbita pepo* L., *C. moschata* (Duchesne) Poirer, and *C. maxima* Duchesne
 Radish—*Raphanus sativus* L.
 Rhubarb—*Rheum rhabarbarum* L.
 Rutabaga—*Brassica napus* L. var. *napobrassica* (L.) Reichb.
 Sage—*Salvia officinalis* L.
 Salsify—*Tragopogon porrifolius* L.
 Savory, summer—*Satureja hortensis* L.
 Sorrel—*Rumex acetosa* L.
 Southernpea—(see Cowpea).
 Soybean—*Glycine max* (L.) Merr.
 Spinach—*Spinacia oleracea* L.
 Spinach, New Zealand—*Tetragonia tetragonioides* (Pall.) Ktze.
 Squash—*Cucurbita pepo* L., *C. moschata* (Duchesne) Poirer, and *C. maxima* Duchesne
 Tomato—*Lycopersicon esculentum* Mill.
 Tomato, husk—*Physalis pubescens* L.
 Turnip—*Brassica rapa* L. subsp. *rapa*
 Watermelon—*Citrus lanatus* (Thunb.) Matsum. and Nakai var. *lanatus*

§ 361.2 General restrictions on the importation of seed and screenings.

(a) No person shall import any agricultural seed, vegetable seed, or screenings into the United States unless the importation is in compliance with this part.

(b) Any agricultural seed, vegetable seed, or screenings imported into the United States not in compliance with this part shall be subject to exportation, destruction, disposal, or any remedial measures that the Administrator determines are necessary to prevent the dissemination into the United States of noxious weeds.

(c) Except as provided in § 361.7(b), coated or pelleted seed may enter the United States only if each lot of seed is accompanied by an officially drawn and sealed sample of seed drawn from the lot before the seed was coated or pelleted. The sample must be drawn in a manner consistent with that described in § 361.5 of this part.

(d) Except as provided in §§ 361.4(a)(3) and 361.7(c), screenings of all agricultural seed and vegetable seed are prohibited entry into the United States.

§ 361.3 Declarations and labeling.

(a) All lots of agricultural seed, vegetable seed, and screenings offered for entry into the United States must be

accompanied by a declaration from the importer of the seed or screenings. The declaration must state the kind, variety, and origin of each lot of seed or screenings and the use for which the seed or screenings are being imported.

(b) Each container of agricultural seed and vegetable seed offered for entry into the United States that is being imported for seeding (planting) purposes must be labeled to indicate the identification code or designation for the lot of seed; the name of each kind or kind and variety of agricultural seed or the name of each kind and variety of vegetable seed present in the lot in excess of 5 percent of the whole; and the designation "hybrid" when the lot contains hybrid seed. Kind and variety names used on the label shall conform to the kind and variety names used in the definitions of "agricultural seed" and "vegetable seed" in § 361.1. If any seed in the lot has been treated, each container must be further labeled, in type no smaller than 8 point, as follows:

(1) The label must indicate that the seed has been treated and provide the name of the substance or process used to treat the seed. Substance names used on the label shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name.

(i) Commonly accepted coined names are not private trademarks and are, thus, free for general public use, and are commonly recognized as names of particular substances, e.g., thiram, captan, lindane, and dichlorone.

(ii) Examples of commonly accepted chemical (generic) names are blue-stone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene, and ethyl mercury acetate. The terms "mercury" or "mercurial" may be used in labeling all types of mercurials.

(iii) Examples of commonly accepted abbreviated chemical names are BHC (1, 2, 3, 4, 5, 6-Hexachlorocyclohexane) and DDT (dichloro diphenyl trichloroethane).

(2) If the seed has been treated with a mercurial or similarly toxic substance harmful to humans and vertebrate animals, the label must include a representation of a skull and crossbones and a statement indicating that the seed has been treated with poison. The skull and crossbones must be at least twice the size of the type used for the information provided on the label, and the poison warning statement must be written in red letters on a background of distinctly contrasting color. Mercurials and similarly toxic substances include the following:

Aldrin, technical
 Demeton
 Dieldrin

p-Dimethylaminobenzenediazo sodium sulfonate
 Endrin
 Ethion
 Heptachlor
 Mercurials, all types
 Parathion
 Phorate
 Toxaphene
 O,O-Diethyl-O-(isopropyl-4-methyl-6-pyrimidyl) thiophosphate
 O, O-Diethyl-S-2-(ethylthio) ethyl phosphorodithioate

(3) If the seed has been treated with a substance other than one classified as a mercurial or similarly toxic substance under paragraph (b)(2) of this section, and the amount remaining with the seed is harmful to humans or other vertebrate animals, the label must indicate that the seed is not to be used for food, feed, or oil purposes. Any amount of any substance used to treat the seed that remains with the seed will be considered harmful when the seed is in containers of more than 4 ounces, except that the following substances will not be deemed harmful when present at a rate less than the number of parts per million (p/m) indicated:

Allethrin—2 p/m
 Malathion—8 p/m
 Methoxychlor—2 p/m
 Piperonyl butoxide—20 p/m (8 p/m on oat and sorghum)
 Pyrethrins—3 p/m (1 p/m on oat and sorghum)

(c) In the case of seed in bulk, the information required under paragraph (b) of this section shall appear in the invoice or other records accompanying and pertaining to such seed. If the seed is in containers and in quantities of 20,000 pounds or more, regardless of the number of lots included, the information required on each container under paragraph (b) of this section need not be shown on each container if each container has stenciled upon it or bears a label containing a lot designation and the invoice or other records accompanying and pertaining to such seed bear the various statements required for the respective seeds.

(d) Each container of agricultural seed and vegetable seed offered for entry into the United States for cleaning need not be labeled to show the information required under paragraph (b) of this section if:

- (1) The seed is in bulk;
- (2) The seed is in containers and in quantities of 20,000 pounds or more, regardless of the number of lots involved, and the invoice or other records accompanying and pertaining to the seed show that the seed is for cleaning; or
- (3) The seed is in containers and in quantities less than 20,000 pounds, and

each container carries a label that bears the words "Seed for cleaning."

§ 361.4 Inspection at the port of first arrival.

(a) All agricultural seed, vegetable seed, and screenings offered for entry into the United States shall be subject to inspection at the port of first arrival. Lots of agricultural seed, vegetable seed, or screenings may enter the United States without meeting the sampling requirements of paragraph (b) of this section if the lot is:

(1) Seed that is not being imported for seeding (planting) purposes and the declaration required by § 361.3(a) states the purpose for which the seed is being imported;

(2) Seed that is being shipped in bond through the United States;

(3) Screenings from seeds of wheat, oats, barley, rye, buckwheat, field corn, sorghum, broomcorn, flax, millet, proso, soybeans, cowpeas, field peas, or field beans that are not being imported for seeding (planting) purposes and the declaration accompanying the screenings as required under § 361.2(a) indicates that the screenings are being imported for processing or manufacturing purposes;

(4) Seed that is being imported for sowing for experimental or breeding purposes, is not for sale, is limited in quantity to the amount indicated in column 3 of table 1 of § 361.5, and is accompanied by a declaration stating the purpose for which it is being imported (seed imported for increase purposes only will not be considered as being imported for experimental or breeding purposes); or

(5) Seed that was grown in the United States, exported, and is now returning to the United States, provided that the person importing the seed into the United States furnishes APHIS with the following documentation:

(i) Export documents indicating the quantity of seed and number of containers, the date of exportation from the United States, the distinguishing marks on the containers at the time of exportation, and the name and address of the United States exporter;

(ii) A document issued by a Customs or other government official of the country to which the seed was exported indicating that the seed was not admitted into the commerce of that country; and

(iii) A document issued by a Customs or other government official of the country to which the seed was exported indicating that the seed was not commingled with other seed after being exported to that country.

(b) Except as provided in §§ 361.5(a)(2) and 361.7, samples will be taken from all agricultural seed and vegetable seed offered for entry into the United States that is being imported for seeding (planting) purposes prior to being released into the commerce of the United States.

(1) Samples of seed will be taken from each lot of seed in accordance with § 361.5 to determine whether any seeds of noxious weeds listed in § 361.6(a) are present. If seeds of noxious weeds are present at a level higher than the tolerances set forth in § 361.6(b), the lot of seed will be deemed to be adulterated and will be rejected for entry into the United States for seeding (planting) purposes. Once deemed adulterated, the lot of seed must be:

(i) Exported from the United States;

(ii) Destroyed under the supervision of an APHIS inspector;

(iii) Cleaned under APHIS supervision at a seed-cleaning facility that is operated in accordance with § 361.8(a); or

(iv) If the lot of seed is adulterated with the seeds of a noxious weed listed in § 361.6(a)(2), the seed may be allowed entry into the United States for feeding or manufacturing purposes, provided the importer withdraws his or her original declaration and files a new declaration stating that the seed is being imported for feeding or manufacturing purposes and that no part of the seed will be used for seeding (planting) purposes.

(2) Seed deemed adulterated may not be mixed with any other seed unless the Administrator determines that two or more lots of seed deemed adulterated are of substantially the same quality and origin. In such cases, the Administrator may allow the adulterated lots of seed to be mixed for cleaning as provided in paragraph (b)(1)(iii) of this section.

(3) If the labeling of a lot of seed is found to be false or misleading in any respect, a finding of false labeling will be made and the seed will be rejected for entry into the United States. A lot of seed found to be falsely labeled must be:

(i) Exported from the United States;

(ii) Destroyed under the supervision of an APHIS inspector; or

(iii) The seed may be allowed entry into the United States if the labeling is corrected under the supervision of an APHIS inspector to accurately reflect the character of the lot of seed.

§ 361.5 Sampling of seed.

(a) *Sample sizes.* As provided in § 361.4(b), samples of seed will be taken from each lot of seed being imported for seeding purposes to determine whether any seeds of noxious weeds listed in

§ 361.6(a) are present. The samples shall be drawn in the manner described in paragraphs (b) and (c) of this section. Unused portions of samples of rare or expensive seeds will be returned by APHIS upon request of the importer.

(1) A minimum sample of not less than 1 quart shall be drawn from each lot of agricultural seed; a minimum sample of not less than 1 pint shall be drawn from each lot of vegetable seed, except that a sample of 1/4 pint will be sufficient for a vegetable seed importation of 5 pounds or less. The minimum sample shall be divided repeatedly until a working sample of proper weight has been obtained. If a mechanical divider cannot be used or is not available, the sample shall be thoroughly mixed, then placed in a pile; the pile shall be divided repeatedly into halves until a working sample of the proper weight remains. The weights of the working samples for noxious weed

examination for each lot of seed are shown in column 1 of table 1 of this section. If the lot of seed is a mixture, the following methods shall be used to determine the weight of the working sample:

(i) If the lot of seed is a mixture consisting of one predominant kind of seed or a group of kinds of similar size, the weight of the working sample shall be the weight shown in column 1 of table 1 of this section for the kind or group of kinds that comprises more than 50 percent of the sample.

(ii) If the lot of seed is a mixture consisting of two or more kinds or groups of kinds of different sizes, none of which comprises over 50 percent of the sample, the weight of the working sample shall be the weighted average (to the nearest half gram) of the weight shown in column 1 of table 1 of this section for each of the kinds that comprise the sample, as determined by the following method:

(A) Multiply the percentage of each component of the mixture (rounded off to the nearest whole number) by the sample sizes shown in column 1 of table 1 of this section;

(B) add all these products;

(C) total the percentages of all components of the mixtures; and

(D) divide the sum in paragraph (a)(1)(ii)(B) of this section by the total in paragraph (a)(1)(ii)(C) of this section.

(2) It is not ordinarily practical to sample and test small lots of seed offered for entry. The maximum sizes of lots of each kind of seed not ordinarily sampled are shown in column 2 of table 1 of this section.

(3) The maximum sizes of lots of each kind of seed allowed entry without sampling for sowing for experimental or breeding purposes as provided in § 361.4(a)(4) are shown in column 3 of table 1 of this section.

TABLE 1

| Name of seed | Working weight for noxious weed examination (grams) | Maximum weight of seed lot not ordinarily sampled (pounds) | Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) |
|--------------------------|---|--|--|
| | (1) | (2) | (3) |
| VEGETABLE SEED | | | |
| Artichoke | 500 | 25 | 50 |
| Asparagus | 500 | 25 | 50 |
| Asparagusbean | 500 | 25 | 50 |
| Bean | | 25 | 200 |
| garden | 500 | 100 | 500 |
| lima | 500 | 25 | 200 |
| runner | 500 | 25 | 200 |
| Beet | 300 | 25 | 50 |
| Broadbean | 500 | 25 | 200 |
| Broccoli | 50 | 5 | 10 |
| Brussels sprouts | 50 | 5 | 10 |
| Burdock, great | 150 | 10 | 50 |
| Cabbage | 50 | 5 | 10 |
| Cabbage, Chinese | 50 | 5 | 10 |
| Cabbage, tronchuda | 100 | 5 | 10 |
| Cantaloupe (see Melon). | | | |
| Cardoon | 500 | 25 | 50 |
| Carrot | 50 | 5 | 10 |
| Cauliflower | 50 | 5 | 10 |
| Celeriac | 25 | 5 | 10 |
| Celery | 25 | 5 | 10 |
| Chard, Swiss | 300 | 25 | 50 |
| Chicory | 50 | 5 | 10 |
| Chives | 50 | 5 | 10 |
| Citron | 500 | 25 | 50 |
| Collards | 50 | 5 | 10 |
| Corn, sweet | 500 | 25 | 200 |
| Cornsalad | 50 | 5 | 10 |
| Cowpea | 500 | 25 | 200 |
| Cress, garden | 50 | 5 | 10 |
| Cress, upland | 35 | 5 | 10 |
| Cress, water | 25 | 5 | 10 |
| Cucumber | 500 | 25 | 50 |

TABLE 1—Continued

| Name of seed | Working weight for noxious weed examination (grams) | Maximum weight of seed lot not ordinarily sampled (pounds) | Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) |
|-----------------------------|---|--|--|
| | (1) | (2) | (3) |
| Dandelion | 35 | 5 | 10 |
| Dill | 50 | 5 | 10 |
| Eggplant | 50 | 5 | 10 |
| Endive | 50 | 5 | 10 |
| Gherkin, West India | 160 | 25 | 50 |
| Kale | 50 | 5 | 10 |
| Kale, Chinese | 50 | 5 | 10 |
| Kale, Siberian | 80 | 5 | 10 |
| Kohlrabi | 50 | 5 | 10 |
| Leek | 50 | 5 | 10 |
| Lettuce | 50 | 5 | 10 |
| Melon | 500 | 25 | 50 |
| Mustard, India | 50 | 25 | 100 |
| Mustard, spinach | 50 | 5 | 10 |
| Okra | 500 | 25 | 50 |
| Onion | 50 | 5 | 10 |
| Onion, Welsh | 50 | 5 | 10 |
| Pak-choi | 50 | 5 | 10 |
| Parsley | 50 | 5 | 10 |
| Parsnip | 50 | 5 | 10 |
| Pea | 500 | 25 | 200 |
| Pepper | 150 | 5 | 10 |
| Pumpkin | 500 | 25 | 50 |
| Radish | 300 | 25 | 50 |
| Rhubarb | 300 | 5 | 10 |
| Rutabaga | 50 | 5 | 10 |
| Sage | 150 | 25 | 50 |
| Salsify | 300 | 25 | 50 |
| Savory, summer | 35 | 5 | 10 |
| Sorrel | 35 | 5 | 10 |
| Soybean | 500 | 25 | 200 |
| Spinach | 150 | 25 | 50 |
| Spinach, New Zealand | 500 | 25 | 50 |
| Squash | 500 | 25 | 50 |
| Tomato | 50 | 5 | 10 |
| Tomato, husk | 35 | 5 | 10 |
| Turnip | 50 | 5 | 10 |
| Watermelon | 500 | 25 | 50 |
| AGRICULTURAL SEED | | | |
| Agrotricum | 500 | 100 | 500 |
| Alfalfa | 50 | 25 | 100 |
| Alfilaria | 50 | 25 | 100 |
| Alyceclover | 50 | 25 | 100 |
| Bahiagrass | 50 | 25 | 100 |
| Barrelclover | 100 | 25 | 100 |
| Barley | 500 | 100 | 500 |
| Bean, adzuki | 500 | 100 | 500 |
| Bean, field | 500 | 100 | 500 |
| Bean, mung | 500 | 100 | 500 |
| Bean (see Velvetbean). | | | |
| Beet, field | 500 | 100 | 500 |
| Beet, sugar | 500 | 100 | 1,000 |
| Beggarweed | 50 | 25 | 100 |
| Bentgrass, colonial | 2.5 | 25 | 100 |
| Bentgrass, creeping | 2.5 | 25 | 100 |
| Bentgrass, velvet | 2.5 | 25 | 100 |
| Bermudagrass | 10 | 25 | 100 |
| Bermudagrass, giant | 10 | 25 | 100 |
| Bluegrass, annual | 10 | 25 | 100 |
| Bluegrass, bulbous | 40 | 25 | 100 |
| Bluegrass, Canada | 5 | 25 | 100 |
| Bluegrass, glaucantha | 10 | 25 | 100 |

TABLE 1—Continued

| Name of seed | Working weight for noxious weed examination (grams) | Maximum weight of seed lot not ordinarily sampled (pounds) | Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) |
|--------------------------------|---|--|--|
| | (1) | (2) | (3) |
| Bluegrass, Kentucky | 10 | 25 | 100 |
| Bluegrass, Nevada | 10 | 25 | 100 |
| Bluegrass, rough | 5 | 25 | 100 |
| Bluegrass, Texas | 10 | 25 | 100 |
| Bluegrass, wood | 5 | 25 | 100 |
| Bluejoint | 5 | 25 | 100 |
| Bluestem, big | 70 | 25 | 100 |
| Bluestem, little | 50 | 25 | 100 |
| Bluestem, sand | 100 | 25 | 100 |
| Bluestem, yellow | 10 | 25 | 100 |
| Bottlebrush-squirreltail | 90 | 25 | 100 |
| Brome, field | 50 | 25 | 100 |
| Brome, meadow | 130 | 25 | 100 |
| Brome, mountain | 200 | 25 | 100 |
| Brome, smooth | 70 | 25 | 100 |
| Broomcorn | 400 | 100 | 500 |
| Buckwheat | 500 | 100 | 500 |
| Buffalograss: | | | |
| (burs) | 200 | 25 | 100 |
| (caryopses) | 30 | 25 | 100 |
| Buffelgrass: | | | |
| (fascicles) | 66 | 25 | 100 |
| (caryopses) | 20 | 25 | 100 |
| Burclover, California: | | | |
| (in bur) | 500 | 100 | 500 |
| (out of bur) | 70 | 25 | 100 |
| Burclover, spotted: | | | |
| (in bur) | 500 | 100 | 500 |
| (out of bur) | 50 | 25 | 100 |
| Burnet, little | 250 | 25 | 100 |
| Buttonclover | 70 | 25 | 100 |
| Canarygrass | 200 | 25 | 100 |
| Canarygrass, reed | 20 | 25 | 100 |
| Carpetgrass | 10 | 25 | 100 |
| Castorbean | 500 | 100 | 500 |
| Chess, soft | 50 | 25 | 100 |
| Chickpea | 500 | 100 | 500 |
| Clover, alsike | 20 | 25 | 100 |
| Clover, arrowleaf | 40 | 25 | 100 |
| Clover, berseem | 50 | 25 | 100 |
| Clover, cluster | 10 | 25 | 100 |
| Clover, crimson | 100 | 25 | 100 |
| Clover, Kenya | 20 | 25 | 100 |
| Clover, Ladino | 20 | 25 | 100 |
| Clover, Lappa | 20 | 25 | 100 |
| Clover, large hop | 10 | 25 | 100 |
| Clover, Persian | 20 | 25 | 100 |
| Clover, red | 50 | 25 | 100 |
| Clover, rose | 70 | 25 | 100 |
| Clover, small hop: | | | |
| (suckling) | 20 | 25 | 100 |
| Clover, strawberry | 50 | 25 | 100 |
| Clover, sub: | | | |
| (subterranean) | 250 | 25 | 100 |
| Clover, white | 20 | 25 | 100 |
| Corn, field | 500 | 100 | 1,000 |
| Corn, pop | 500 | 100 | 1,000 |
| Cotton | 500 | 100 | 500 |
| Cowpea | 500 | 100 | 500 |
| Crambe | 250 | 25 | 100 |
| Crested dogtail | 20 | 25 | 100 |
| Crotalaria, lance | 70 | 25 | 100 |
| Crotalaria, showy | 250 | 25 | 100 |

TABLE 1—Continued

| Name of seed | Working weight for noxious weed examination (grams) | Maximum weight of seed lot not ordinarily sampled (pounds) | Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) |
|-------------------------------------|---|--|--|
| | (1) | (2) | (3) |
| Crotalaria, slenderleaf | 100 | 25 | 100 |
| Crotalaria, striped | 100 | 25 | 100 |
| Crotalaria, Sunn | 500 | 25 | 100 |
| Crownvetch | 100 | 25 | 100 |
| Dallisgrass | 40 | 25 | 100 |
| Dichondra | 50 | 25 | 100 |
| Dropseed, sand | 2.5 | 25 | 100 |
| Emmer | 500 | 100 | 500 |
| Fescue, Chewings | 30 | 25 | 100 |
| Fescue, hair | 10 | 25 | 100 |
| Fescue, hard | 20 | 25 | 100 |
| Fescue, meadow | 50 | 25 | 100 |
| Fescue, red | 30 | 25 | 100 |
| Fescue, sheep | 20 | 25 | 100 |
| Fescue, tall | 50 | 25 | 100 |
| Flax | 150 | 25 | 100 |
| Galletagrass: | | | |
| (other than caryopses) | 100 | 25 | 100 |
| (caryopses) | 50 | 25 | 100 |
| Grama, blue | 20 | 25 | 100 |
| Grama, side-oats: | | | |
| (other than caryopses) | 60 | 25 | 100 |
| (caryopses) | 20 | 25 | 100 |
| Guar | 500 | 25 | 100 |
| Guineagrass | 20 | 25 | 100 |
| Hardinggrass | 30 | 25 | 100 |
| Hemp | 500 | 100 | 500 |
| Indiangrass, yellow | 70 | 25 | 100 |
| Indigo, hairy | 70 | 25 | 100 |
| Japanese lawnglass | 20 | 25 | 100 |
| Johnsongrass | 100 | 25 | 100 |
| Kenaf | 500 | 100 | 500 |
| Kochia, forage | 20 | 25 | 100 |
| Kudzu | 250 | 25 | 100 |
| Lentil | 500 | 25 | 100 |
| Lespedeza, Korean | 50 | 25 | 100 |
| Lespedeza, sericea or Chinese | 30 | 25 | 100 |
| Lespedeza, Siberian | 30 | 25 | 100 |
| Lespedeza, striate | 50 | 25 | 100 |
| Lovegrass, sand | 10 | 25 | 100 |
| Lovegrass, weeping | 10 | 25 | 100 |
| Lupine, blue | 500 | 100 | 500 |
| Lupine, white | 500 | 100 | 500 |
| Lupine, yellow | 500 | 100 | 500 |
| Manilagrass | 20 | 25 | 100 |
| Meadow foxtail | 30 | 25 | 100 |
| Medick, black | 50 | 25 | 100 |
| Milkvetch | 90 | 25 | 100 |
| Millet, browntop | 80 | 25 | 100 |
| Millet, foxtail | 50 | 25 | 100 |
| Millet, Japanese | 90 | 25 | 100 |
| Millet, pearl | 150 | 25 | 100 |
| Millet, proso | 150 | 25 | 100 |
| Molassesgrass | 5 | 25 | 100 |
| Mustard, black | 20 | 25 | 100 |
| Mustard, India | 50 | 25 | 100 |
| Mustard, white | 150 | 25 | 100 |
| Napiergrass | 50 | 25 | 100 |
| Needlegrass, green | 70 | 25 | 100 |
| Oat | 500 | 100 | 500 |
| Oatgrass, tall | 60 | 25 | 100 |
| Orchardgrass | 30 | 25 | 100 |
| Panicgrass, blue | 20 | 25 | 100 |

TABLE 1—Continued

| Name of seed | Working weight for noxious weed examination (grams) | Maximum weight of seed lot not ordinarily sampled (pounds) | Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) |
|--------------------------------------|---|--|--|
| | (1) | (2) | (3) |
| Panicgrass, green | 20 | 25 | 100 |
| Pea, field | 500 | 100 | 500 |
| Peanut | 500 | 100 | 500 |
| Poa trivialis (see bluegrass, rough) | | | |
| Rape, annual | 70 | 25 | 100 |
| Rape, bird | 70 | 25 | 100 |
| Rape, turnip | 50 | 25 | 100 |
| Rape, winter | 100 | 25 | 100 |
| Redtop | 2.5 | 25 | 100 |
| Rescuegrass | 200 | 25 | 100 |
| Rhodesgrass | 10 | 25 | 100 |
| Rice | 500 | 100 | 500 |
| Ricegrass, Indian | 70 | 25 | 100 |
| Roughpea | 500 | 100 | 500 |
| Rye | 500 | 100 | 500 |
| Rye, mountain | 280 | 25 | 100 |
| Ryegrass, annual | 50 | 25 | 100 |
| Ryegrass, intermediate | 80 | 25 | 100 |
| Ryegrass, perennial | 50 | 25 | 100 |
| Ryegrass, Wimmera | 50 | 25 | 100 |
| Safflower | 500 | 100 | 500 |
| Sagewort, Louisiana | 5 | 25 | 100 |
| Sainfoin | 500 | 100 | 500 |
| Saltbush, fourwing | 150 | 25 | 100 |
| Seasame | 70 | 25 | 100 |
| Sesbania | 250 | 25 | 100 |
| Smilo | 20 | 25 | 100 |
| Sorghum | 500 | 100 | 1,000 |
| Sorghum alnum | 150 | 25 | 100 |
| Sorghum-sudangrass hybrid | 500 | 100 | 1,000 |
| Sorghum | 150 | 25 | 100 |
| Sourclover | 50 | 25 | 100 |
| Soybean | 500 | 100 | 500 |
| Spelt | 500 | 100 | 500 |
| Sudangrass | 250 | 25 | 100 |
| Sunflower | 500 | 100 | 500 |
| Sweetclover, white | 50 | 25 | 100 |
| Sweetclover, yellow | 50 | 25 | 100 |
| Sweet vernalgrass | 20 | 25 | 100 |
| Sweetvetch, northern | 190 | 25 | 100 |
| Switchgrass | 40 | 25 | 100 |
| Timothy | 10 | 25 | 100 |
| Timothy, turf | 10 | 25 | 100 |
| Tobacco | 5 | 1 | 1 |
| Trefoil, big | 20 | 25 | 100 |
| Trefoil, birdsfoot | 30 | 25 | 100 |
| Triticale | 500 | 100 | 500 |
| Vaseygrass | 30 | 25 | 100 |
| Veldtgrass | 40 | 25 | 100 |
| Velvetbean | 500 | 100 | 500 |
| Velvetgrass | 10 | 25 | 100 |
| Vetch, common | 500 | 100 | 500 |
| Vetch, hairy | 500 | 100 | 500 |
| Vetch, Hungarian | 500 | 100 | 500 |
| Vetch, Monantha | 500 | 100 | 500 |
| Vetch, narrowleaf | 500 | 100 | 500 |
| Vetch, purple | 500 | 100 | 500 |
| Vetch, woodypod | 500 | 100 | 500 |
| Wheat, common | 500 | 100 | 500 |
| Wheat, club | 500 | 100 | 500 |
| Wheat, durum | 500 | 100 | 500 |
| Wheat, Polish | 500 | 100 | 500 |
| Wheat, poulard | 500 | 100 | 500 |

TABLE 1—Continued

| Name of seed | Working weight for noxious weed examination (grams) | Maximum weight of seed lot not ordinarily sampled (pounds) | Maximum weight of seed lot permitted entry for experimental or breeding purposes without sampling (pounds) |
|---|---|--|--|
| | (1) | (2) | (3) |
| Wheat x Agroticum | 500 | 100 | 500 |
| Wheatgrass, beardless | 80 | 25 | 100 |
| Wheatgrass, fairway crested | 40 | 25 | 100 |
| Wheatgrass, standard crested | 50 | 25 | 100 |
| Wheatgrass, intermediate | 150 | 25 | 100 |
| Wheatgrass, pubescent | 150 | 25 | 100 |
| Wheatgrass, Siberian | 50 | 25 | 100 |
| Wheatgrass, slender | 70 | 25 | 100 |
| Wheatgrass, streambank | 50 | 25 | 100 |
| Wheatgrass, tall | 150 | 25 | 100 |
| Wheatgrass, western | 100 | 25 | 100 |
| Wildrye, basin | 80 | 25 | 100 |
| Wild-rye, Canada | 110 | 25 | 100 |
| Wild-rye, Russian | 60 | 25 | 100 |
| Zoysia Japonica (see Japanese lawngrass). | | | |
| Zoysia matrella (see Manilagrass). | | | |

(b) *Method of sampling.* (1) When an importation consists of more than one lot, each lot shall be sampled separately.

(2) For lots of six or fewer bags, each bag shall be sampled. A total of at least five trierfuls shall be taken from the lot.

(3) For lots of more than six bags, five bags plus at least 10 percent of the number of bags in the lot shall be sampled. (Round off numbers with decimals to the nearest whole number, raising 0.5 to the next whole number.) Regardless of the lot size, it is not necessary to sample more than 30 bags.

(4) When the lot of seed to be sampled is comprised of seed in small containers that cannot practically be sampled as described in paragraph (b)(2) or (b)(3) of this section, entire unopened containers may be taken in sufficient number to supply a sample that meets the minimum size requirements of paragraph (a)(1) of this section.

(c) *Drawing samples.* Samples will not be drawn unless each container is labeled to show the lot designation and the name of the kind and variety of each agricultural seed, or kind and variety of each vegetable seed, appearing on the invoice and other entry papers, and a declaration has been filed by the importer as required under § 361.2(a). In order to secure a representative sample, an APHIS inspector will draw equal portions from evenly distributed parts of the quantity of seed to be sampled; the APHIS inspector, therefore, must be given access to all parts of that quantity.

(1) For free-flowing seed in bags or in bulk, a probe or trier shall be used. For

small free-flowing seed in bags, a probe or trier long enough to sample all portions of the bag shall be used. When drawing more than one trierful of seed from a bag, a different path through the seed shall be used when drawing each sample.

(2) For non-free-flowing seed in bags or bulk that may be difficult to sample with a probe or trier, samples shall be obtained by thrusting one's hand into the seed and withdrawing representative portions. The hand shall be inserted in an open position with the fingers held closely together while the hand is being inserted and the portion withdrawn. When more than one handful is taken from a bag, the handfuls shall be taken from well-separated points.

(3) When more than one sample is drawn from a single lot, the samples may be combined into a composite sample unless it appears that the quantity of seed represented as a lot is not of uniform quality, in which case the separate samples shall be forwarded together, but without being combined into a composite sample.

(d) In most cases, samples will be drawn and examined by an APHIS inspector at the port of first arrival. The APHIS inspector may release a shipment if no contaminants are found and the labeling is sufficient. If contaminants are found or the labeling of the seed is insufficient, the APHIS inspector may forward the sample to the USDA Seed Examination Facility (SEF), Beltsville, MD, for analysis, testing, or

examination. APHIS will notify the owner or consignee of the seed that samples have been drawn and forwarded to the SEF and that the shipment must be held intact pending a decision by APHIS as to whether the seed is within the noxious weed seed tolerances of § 361.6 and is accurately labeled. If the decision pending is with regard to the noxious weed seed content of the seed and the seed has been determined to be accurately labeled, the seed may be released for delivery to the owner or consignee under the following conditions:

(1) The owner or consignee executes with Customs either a Customs single-entry bond or a Customs term bond, as appropriate, in such amount as is prescribed by applicable Customs regulations;

(2) The bond must contain a condition for the redelivery of the seed or any part thereof upon demand of the Port Director of Customs at any time;

(3) Until the seed is approved for entry upon completion of APHIS' examination, the seed must be kept intact and not tampered with in any way, or removed from the containers except under the supervision of an APHIS inspector; and

(4) The owner or consignee must keep APHIS informed as to the location of the seed until it is finally entered into the commerce of the United States.

§ 361.6 Noxious weed seeds.

(a) Seeds of the plants listed in paragraphs (a)(1) and (a)(2) of this

section shall be considered noxious weed seeds.

(1) Seeds with no tolerances applicable to their introduction:

Aeginetia spp.
Ageratina adenophora (Sprengel) King & Robinson
Alectra spp.
Alternanthera sessilis (L.) R. Brown ex de Candolle
Asphodelus fistulosus L.
Avena sterilis L. (including *Avena ludoviciana* Durieu)
Azolla pinnata R. Brown
Borreria alata (Aublet) de Candolle
Carthamus oxyacantha M. Bieberstein
Chrysopogon aciculatus (Retzius) Trinius
Commelina benghalensis L.
Crupina vulgaris Cassini
Cuscuta spp.
Digitaria abyssinica (= *D. scalarum*)
Digitaria velutina (Forsskal) Palisot de Beauvois
Drymaria arenarioides Humboldt & Bonpland ex Roemer & Schultes
Eichhornia azurea (Swartz) Kunth
Emex australis Steinheil
Emex spinosa (L.) Campdera
Galega officinalis L.
Heracleum mantegazzianum
Sommier & Levier
Hydrilla verticillata (Linnaeus f.) Royle
Hygrophila polysperma T. Anderson
Imperata brasiliensis Trinius
Imperata cylindrica (L.) Raeuschel
Ipomoea aquatica Forsskal
Ipomoea triloba L.
Ischaemum rugosum Salisbury
Lagarosiphon major (Ridley) Moss
Leptochloa chinensis (L.) Nees
Limnophila sessiliflora (Vahl) Blume
Lycium ferocissimum Miers
Melaleuca quinquenervia (Cav.) Blake
Melastoma malabathricum L.
Mikania cordata (Burman f.) B. L.
Robinson
Mikania micrantha Humboldt, Bonpland, & Kunth
Mimosa invisa Martius
Mimosa pigra L. var. *pigra*
Monochoria hastata (L.) Solms-Laubach
Monochoria vaginalis (Burman f.) C. Presl
Nassella trichotoma (Nees) Hackel ex Arechavaleta
Opuntia aurantiaca Lindley
Orobancha spp.
Oryza longistaminata A. Chevalier & Roehrich
Oryza punctata Kotschy ex Steudel
Oryza rufipogon Griffith
Ottelia alismoides (L.) Pers.
Paspalum scrobiculatum L.
Pennisetum clandestinum Hochstetter ex Chiovenda
Pennisetum macrourum Trinius

Pennisetum pedicellatum Trinius
Pennisetum polystachion (L.) Schultes
Prosopis alata R. A. Philippi
Prosopis argentina Burkart
Prosopis articulata S. Watson
Prosopis burkartii Munoz
Prosopis caldenia Burkart
Prosopis calingastana Burkart
Prosopis campestris Grisebach
Prosopis castellanosi Burkart
Prosopis denudans Benth
Prosopis elata (Burkart) Burkart
Prosopis farcta (Solander ex Russell) Macbride
Prosopis ferox Grisebach
Prosopis fiebrigii Harms
Prosopis hassleri Harms
Prosopis humilis Gillies ex Hooker & Arnott
Prosopis kuntzei Harms
Prosopis pallida (Humboldt & Bonpland ex Willdenow) Humboldt, Bonpland, & Kunth
Prosopis palmeri S. Watson
Prosopis reptans Benth var. *reptans*
Prosopis rojasiana Burkart
Prosopis ruizlealii Burkart
Prosopis ruscifolia Grisebach
Prosopis sericantha Gillies ex Hooker & Arnott
Prosopis strombulifera (Lamarck) Benth
Prosopis torquata (Cavanilles ex Lagasca y Segura) de Candolle
Rottboellia cochinchinensis (Lour.) Clayton (= *R. exaltata* (L.) L. f.)
Rubus fruticosus L. (complex)
Rubus moluccanus L.
Saccharum spontaneum L.
Sagittaria sagittifolia L.
Salsola vermiculata L.
Salvinia auriculata Aublet
Salvinia biloba Raddi
Salvinia herzogii de la Sota
Salvinia molesta D.S. Mitchell
Setaria pallide-fusca (Schumacher) Stapf & Hubbard
Solanum torvum Swartz
Solanum viarum Dunal
Sparganium erectum L.
Striga spp.
Tridax procumbens L.
Urochloa panicoides Beauvois
(2) Seeds with tolerances applicable to their introduction:
Acroptilon repens (L.) DC.
(= *Centaurea repens* L.) (= *Centaurea picris*)
Cardaria draba (L.) Desv.
Cardaria pubescens (C. A. Mey.) Jarmol.
Convolvulus arvensis L.
Cirsium arvense (L.) Scop.
Elytrigia repens (L.) Desv.
(= *Agropyron repens* (L.) Beauv.)
Euphorbia esula L.
Sonchus arvensis L.
Sorghum halepense (L.) Pers.

(b) The tolerance applicable to the prohibition of the noxious weed seeds listed in paragraph (a)(2) of this section shall be two seeds in the minimum amount required to be examined as shown in column 1 of table 1 of § 361.5. If fewer than two seeds are found in an initial examination, the shipment from which the sample was drawn may be imported. If two seeds are found in an initial examination, a second sample must be examined. If two or fewer seeds are found in the second examination, the shipment from which the samples were drawn may be imported. If three or more seeds are found in the second examination, the shipment from which the samples were drawn may not be imported. If three or more seeds are found in an initial examination, the shipment from which the sample was drawn may not be imported.

(c) Any seed of any noxious weed that can be determined by visual inspection (including the use of transmitted light or dissection) to be within one of the following categories shall be considered inert matter and not counted as a weed seed:

(1) Damaged seed (other than grasses) with over one half of the embryo missing;

(2) Grass florets and caryopses classed as inert:

(i) Glumes and empty florets of weedy grasses;

(ii) Damaged caryopses, including free caryopses, with over one-half the root-shoot axis missing (the scutellum excluded);

(iii) Immature free caryopses devoid of embryo or endosperm;

(iv) Free caryopses of quackgrass (*Elytrigia repens*) that are 2 mm or less in length; or

(v) Immature florets of quackgrass (*Elytrigia repens*) in which the caryopses are less than one-third the length of the palea. The caryopsis is measured from the base of the rachilla.

(3) Seeds of legumes (*Fabaceae*) with the seed coats entirely removed.

(4) Immature seed units, devoid of both embryo and endosperm, such as occur in (but not limited to) the following plant families: buckwheat (*Polygonaceae*), morning glory (*Convolvulaceae*), nightshade (*Solanaceae*), and sunflower (*Asteraceae*).

(5) Dodder (*Cuscuta* spp.) seeds devoid of embryos and seeds that are ashy gray to creamy white in color are inert matter. Dodder seeds should be sectioned when necessary to determine if an embryo is present, as when the seeds have a normal color but are slightly swollen, dimpled, or have minute holes.

§ 361.7 Special provisions for Canadian-origin seed and screenings.

(a) In addition to meeting the declaration and labeling requirements of § 361.2 and all other applicable provisions of this part, all Canadian-origin agricultural seed and Canadian-origin vegetable seed offered for entry into the United States from Canada for seeding (planting) purposes or cleaning must be accompanied by a certificate of analysis issued by Agriculture and Agri-Food Canada or by a private seed laboratory accredited by Agriculture and Agri-Food Canada. Samples of seed shall be drawn using sampling methods comparable to those detailed in § 361.5 of this part. The seed analyst who examines the seed at the laboratory must be accredited to analyze the kind of seed covered by the certificate.

(1) If the seed is being imported for seeding (planting) purposes, the certificate of analysis must verify that the seed meets the noxious weed seed tolerances of § 361.6. Such seed will not be subject to the sampling requirements of § 361.3(b).

(2) If the seed is being imported for cleaning, the certificate of analysis must name the kinds of noxious weed seeds that are to be removed from the lot of seed. Seed being imported for cleaning must be consigned to a facility operated in accordance with § 361.8(a).

(b) Coated or pelleted agricultural seed and coated or pelleted vegetable seed of Canadian origin may be imported into the United States if the seed was analyzed prior to being coated or pelleted and is accompanied by a certificate of analysis issued in accordance with paragraph (a) of this section.

(c) Screenings otherwise prohibited under this part may be imported from Canada if the screenings are imported for processing or manufacture and are consigned to a facility operating under a compliance agreement as provided by § 361.8(b).

§ 361.8 Cleaning of imported seed and processing of certain Canadian-origin screenings.

(a) Imported seed that is found to contain noxious weed seeds at a level higher than the tolerances set forth in § 361.6(b) may be cleaned under the supervision of an APHIS inspector. The cleaning will be at the expense of the owner or consignee.

(1) At the location where the seed is being cleaned, the identity of the seed must be maintained at all times to the satisfaction of the Administrator. The refuse from the cleaning must be placed in containers and securely sealed and

identified. Upon completion of the cleaning, a representative sample of the seed will be analyzed by a registered seed technologist, an official seed analyst, or by APHIS; if the seed is found to be within the noxious weed tolerances set forth in § 361.6(b), the seed may be allowed entry into the United States;

(2) The refuse from the cleaning must be destroyed under the supervision of an APHIS inspector at the expense of the owner or consignee of the seed.

(3) Any person engaged in the business of cleaning imported seed may enter into a compliance agreement under paragraph (c) of this section to facilitate the cleaning of seed imported into the United States under this part.

(b) Any person engaged in the business of processing screenings who wishes to process screenings imported from Canada under § 361.7(c) that are otherwise prohibited under this part must enter into a compliance agreement under paragraph (c) of this section.

(c) A compliance agreement for the cleaning of imported seed or processing of otherwise prohibited screenings from Canada shall be a written agreement¹ between a person engaged in such a business, the State in which the business operates, and APHIS, wherein the person agrees to comply with the provisions of this part and any conditions imposed pursuant thereto. Any compliance agreement may be canceled orally or in writing by the APHIS inspector who is supervising its enforcement whenever the inspector finds that the person who entered into the compliance agreement has failed to comply with the provisions of this part or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons for the decision shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision to the Administrator, in writing, within 10 days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact,

a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

§ 361.9 Recordkeeping.

(a) Each person importing agricultural seed or vegetable seed under this part must maintain a complete record, including copies of the declaration and labeling required under this part and a sample of seed, for each lot of seed imported. Except for the seed sample, which may be discarded 1 year after the entire lot represented by the sample has been disposed of by the person who imported the seed, the records must be maintained for 3 years following the importation.

(b) Each sample of vegetable seed and each sample of agricultural seed must be at least equal in weight to the sample size prescribed for noxious weed seed examination in table 1 of § 361.4.

(c) An APHIS inspector shall, during normal business hours, be allowed to inspect and copy the records.

§ 361.10 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 during regularly assigned hours of duty and at the usual places of duty. All expenses incurred by the U.S. Department of Agriculture (including travel, per diem or subsistence, and salaries of officers or employees of the Department) in connection with the supervision of cleaning, labeling, other reconditioning, or destruction of seed, screenings, or refuse under this part shall be reimbursed by the owner or consignee of the seed or screenings.

Done in Washington, DC, this 30th day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

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¹ Compliance Agreement forms are available without charge from Permit Unit, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories).