

## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Parts 201 and 361

[Docket No. 93-126-5]

RIN 0579-AA64

## Imported Seed and Screenings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

**SUMMARY:** We are amending 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 changes are being made 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 changes will 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 monitoring of an Animal and Plant Health Inspection Service inspector.

EFFECTIVE DATE: October 16, 1997.

**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).

The responsibility for inspection of imported seeds under Title III of the FSA was transferred from the Agricultural Marketing Service (AMS) to the Animal and Plant Health Inspection Service (APHIS) by a final rule amending the delegations of authority from the Secretary of Agriculture that was published in the **Federal Register** on September 22, 1982 (47 FR 41725), and effective October 1, 1982.

In a proposed rule published in the **Federal Register** on October 4, 1996 (61 FR 51791-51810, Docket No. 93-126-4), we proposed to revise the 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 proposed to move the regulations from 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 also proposed to 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. We also announced that we would host a public hearing on November 21, 1996, to provide interested persons with an opportunity to present their views regarding the proposed rule.

We solicited comments concerning the proposed rule for 60 days ending December 3, 1996. We received five comments by that date. The November 21, 1996, hearing was held as scheduled, but no members of the public attended to present comments (although one of the five comments mentioned above was included in the record of the public hearing at the request of the person who submitted the comment). The comments we received were from U.S. and Canadian seed analysts associations, a seed trade association, and two State departments of agriculture. Although all of the commenters offered support for the proposed rule, each of them offered suggestions or sought clarification regarding the changes proposed in the proposed rule. Those comments are discussed below.

## Change in Responsible Canadian Agency

On April 1, 1997, the Canadian Food Inspection Agency, a public agency reporting to Canada's Minister of Agriculture and Agri-Food, was established. The Canadian Food Inspection Agency's responsibilities

include plant health activities conducted at the Federal level, including the seed analysis and laboratory accreditation activities we had attributed to Agriculture and Agri-Food Canada in the proposed rule. Therefore, for accuracy, we will refer to the Canadian Food Inspection Agency, rather than to Agriculture and Agri-Food Canada, throughout this document. We have also updated the regulations in § 371.7(a) to reflect that change.

## Discussion of Comments

*Comment:* The proposed regulations refer to an "official seed analyst," which is defined as a "registered member of the Association of Official Seed Analysts" (AOSA). The AOSA does not have a category of "registered member," and the voting category of membership in AOSA is entitled "official laboratory." Therefore, the term "official seed laboratory," which would be defined as an official laboratory member of AOSA, should be used instead of "official seed analyst."

*Response:* We agree with the commenter and have made the suggested changes. Specifically, we have changed the definition in § 361.1 of "official seed analyst" to "official seed laboratory" with the suggested definition, and we have changed a reference in § 361.8(a)(1) from "official seed analyst" to "official seed laboratory."

*Comment:* Members of the Commercial Seed Analysts Association of Canada (CSAAC) should be given the same recognition as the registered seed technologists and official seed analysts mentioned in the proposed rule.

*Response:* The role of the registered seed technologist and official seed analyst (now official seed laboratory, as noted above) in the proposed regulations and in this final rule is limited to analyzing representative samples of seed cleaned in the United States under a compliance agreement as set forth in § 361.8(a)(1). While it is likely that members of CSAAC are working in laboratories associated with or accredited by the Canadian Food Inspection Agency and will, thus, be involved in the analysis and certification of seed in Canada under § 361.7, we do not foresee that they would be involved in the analysis of seed after it has been imported into the United States and cleaned. For that reason, we do not believe it is necessary to explicitly mention CSAAC or its members in the regulations. Therefore, we have made no changes in this final rule based on that comment.

*Comment:* The noxious weed seed tolerances set out in § 361.6(b) are too lenient. As it is currently written, the discovery of two seeds in an initial examination triggers a second examination; if two or fewer seeds are found in the second examination, the lot of seed may be imported. Such a tolerance would allow approximately 100 noxious weed seeds per 50 lb. bag for a crop seed the size of wheat. The discovery of even one or two seeds in a second examination serves only to confirm that prohibited noxious weed seeds are present in the lot of seed. The regulations should be changed to require a second examination upon the discovery of a single noxious weed seed; if the second examination yields one or more noxious weed seeds, then the lot of seed should be refused entry.

*Response:* The tolerances established under the FSA are consistent with those of the Association of Official Seed Analysts (AOSA) and the Association of American Seed Control Officials' "Recommended Uniform State Seed Law" (RUSSEL), as amended in July 1996. The RUSSEL recommends that State seed laws recognize the tolerances in AOSA's "Rules for Testing Seeds." Also, within the framework of the General Agreement on Tariffs and Trade and the North American Free Trade Agreement, a quarantine action such as that recommended by the commenter, i.e. prohibiting all weed seeds with no tolerances, is not appropriate for pests that are widespread in the importing country. All of the weeds for which we allow tolerances are already established and widespread in the United States. Therefore, we have made no changes in this final rule based on that comment.

*Comment:* The list of noxious weeds in § 361.6 does not include many species of weeds that are prohibited in many States. This could result in a State having to accept an imported lot of seed that contains weed seeds that are prohibited by that State but not by regulations. The list of noxious weeds in § 361.6 should be expanded to include noxious weed seed prohibited by States.

*Response:* The commenter is correct in noting that many States prohibit weeds that are not included on the list of noxious weeds in § 361.6; it is also true, however, that the list in § 361.6 is more restrictive than the noxious weed lists maintained by some other States. Generally speaking, the weeds found in the list in § 361.6 are those weeds prohibited most often by individual States. Any State may inspect seed shipments sold within its borders and can issue a "stop sale" if a State inspector finds weeds on the State's prohibited list. Further, the AMS'

regulations in 7 CFR 201.50 recognize each States' prohibited weed list in enforcing the interstate provisions of the FSA. Because individual States have the authority to prevent the sale within their borders of seed containing weed seeds prohibited under State regulations, we do not believe it is necessary to amend the imported seed regulations to reflect the noxious weed lists of all the States. We have, therefore, made no changes in this final rule based on that comment.

*Comment:* As set forth in the proposed rule, the regulations in § 361.7 are unclear as to who in Canada will be doing the sampling of seed intended for export to the United States. Sampling must be performed by persons trained in proper sampling and who are in no way biased as to test outcome.

*Response:* The sampling in Canada will be performed in the manner seen as necessary by the commenter. Seed samples drawn in Canada pursuant to the regulations in § 361.7 will be analyzed by the Canadian Food Inspection Agency or by a private seed laboratory accredited by the Canadian Food Inspection Agency, and the Canadian Food Inspection Agency has informed APHIS that it will require those laboratories testing seed for export to the United States to test only "officially recognized samples" as defined by the Canada Seeds Regulations. Thus, the seed will have to be drawn according to recognized methods by an accredited grader, a person licensed to operate an approved conditioner, or a person accredited by an official certifying agency to sample seed.

*Comment:* APHIS should require sampling for seed imported for feeding purposes. Seed screenings are often used as a component of feed and may contain a high percentage of viable noxious weed seeds. There should be limitations on viable noxious weed seeds in feed and some measure of sampling or monitoring.

*Response:* As we noted in the proposed rule with regard to screenings, the process usually used to produce animal feed—i.e., an extrusion process that includes heating and pelletizing—is sufficient to devitalize any live seed, which reduces to an insignificant level any risk that the feed would contain any viable noxious weed seeds. We do not, therefore, believe that it is necessary to require sampling or monitoring for imported seed declared for feeding purposes.

*Comment:* When seed intended for planting purposes is imported and found to be adulterated with noxious weed seeds, the regulations would allow

the seed to enter the United States if the importer withdraws the original declaration and files a new declaration stating that the seed is being imported for feeding or manufacturing purposes. How can APHIS be sure that the importer will not use the seed for planting purposes once it reaches its final destination in the United States?

*Response:* There are avenues that an importer can pursue to render adulterated seed fit for planting purposes and penalties in place to discourage the type of action envisioned by the commenter. If a lot of seed is deemed to be adulterated, the importer of the seed would have the option of sending the seed to a seed-cleaning facility. After the noxious weed seeds are removed, the importer could sell the seed for planting purposes. When an importer instead chooses to file a new declaration for the seed, that new declaration must include a statement that no part of the seed will be used for planting purposes, and the importer will be bound to abide by the new declaration. Under § 304 of the FSA (7 U.S.C. 1586), it is unlawful for any person to sell or offer for sale any seed or screenings for seeding (planting) purposes if the seed or screenings were imported for other than seeding (planting) purposes. Any seed sold, delivered for transportation in interstate commerce, or transported in interstate or foreign commerce in violation of any of the provisions of the FSA would, under § 405 of the FSA (7 U.S.C. 1595), be subject to seizure. Further, § 406 of the FSA (7 U.S.C. 1596) provides that any person who knowingly violates any provision of the FSA or the regulations shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of \$1,000 for the first offense and a fine of not more than \$2,000 for each subsequent offense. In addition, if the importer intends to sell the adulterated seed for planting purposes but files a new declaration stating that the seed is to be used for feed or manufacturing purposes merely to secure the release of the seed, the importer could be subject to the provisions of 18 U.S.C. 1001, which provides, in part, that "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully \* \* \* makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both."

*Comment:* Section 361.3 contains references to seed treated with mercurials. Is it not the case that mercurial seed treatments were banned several years ago?

*Response:* With regard to the treatment of seeds with mercurials or similarly toxic substances, the scope of the FSA and the regulations is limited to requiring that such treated seed be properly labeled. Those labeling requirements, as noted by the commenter, are contained in § 361.3 of the regulations. However, because mercurials are harmful to humans and vertebrate animals, they would be covered under the Food and Drug Administration's (FDA's) regulations in 16 CFR 2.25(b), which state, in part, that the FDA "will regard as adulterated any interstate shipment of the food seeds wheat, corn, oats, rye, barley, and sorghum bearing a poisonous treatment in excess of a recognized tolerance or treatment for which no tolerance or exemption from tolerance is recognized in regulations promulgated pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act, unless such seeds have been adequately denatured by a suitable color to prevent their subsequent inadvertent use as food for man or feed for animals." Thus, seeds deemed adulterated by the FDA would be subject to appropriate action by the FDA under its authority.

*Comment:* Will APHIS monitor the Canadian seed testing laboratories that analyze the seed to be exported to the United States? What actions will be taken if APHIS finds that one of those Canadian laboratories is conducting incorrect or incomplete analyses on seed to be exported to the United States?

*Response:* APHIS will take samples of Canadian-origin seed for monitoring purposes. If our test results do not agree with those of the Canadian seed-testing laboratory that analyzed the seed, we will notify the Canadian Food Inspection Agency of the discrepancy and cooperate with the Canadian Food Inspection Agency in its investigation of the cause of the discrepancy. If sampling or laboratory errors are found to have occurred, corrective action will be initiated by the Canadian Food Inspection Agency. Further, APHIS will increase its monitoring of seed shipments that have been analyzed by the laboratory in question.

*Comment:* Section 361.9 of the proposed rule states that seed importers must retain a seed sample from each lot of imported seed for at least 1 year. This requirement is too burdensome and should be eliminated; such samples will not assist in the tracing or monitoring of potential problems. In addition, it has

traditionally been the role of the seed exporter to maintain samples of seed from each lot shipped.

*Response:* As we noted in the proposed rule, seed companies must already retain records and samples to comply with the AMS' regulations promulgated under the interstate provisions of the FSA, so we do not believe that the recordkeeping requirements of this rule place an additional burden on those companies. Further, even if exporters retain samples from lots of seed shipped to this country, only the importer's sample can be relied upon to accurately reflect the content of the seed lot that was actually received in the United States. Therefore, we continue to believe that it is necessary for importers to retain a seed sample to provide a reference that would help APHIS to trace the source of potential problems and monitor the efficacy of noxious weed examinations and cleaning.

#### Other Changes

We have made a change to the wording of the introductory text of paragraph (a) in § 361.4, "Inspection at the port of first arrival." In the proposed rule, that paragraph stated that 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. Because the phrase "subject to inspection" does not accurately represent what must occur at the port of first arrival prior to seed and screenings, or any other agricultural commodity, being released for entry into the United States, we have changed that paragraph to make it clear that the seed or screenings must be made available for examination by an inspector and must remain at the port of first arrival until released by an inspector.

Similarly, we have changed those sections of the regulations that refer to an APHIS inspector's "supervision" of certain activities, i.e., the destruction or cleaning of seed, the correction of the labeling on a lot of seed, the removal of seed from containers, and the enforcement of compliance agreements. To state that an APHIS inspector will "supervise" such activities may imply that the inspector is in a position of authority over the persons conducting such activities and is, therefore, responsible for all issues associated with the conduct of those activities, even issues unrelated to the inspector's authority such as worker safety or compliance with labor laws. The actual role of an APHIS inspector in such situations is to ensure that the requirements of APHIS' regulations are

being satisfied; therefore, we have replaced references to "supervision" with references to "monitoring" to more clearly represent the role of APHIS inspectors participating in activities conducted in connection with the regulations.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

#### Executive Order 12866 and Regulatory Flexibility Act

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

We are amending 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 changes, the regulations will reflect recent amendments to the FSA and the transfer of responsibility for the import provisions of the act from AMS to APHIS, eliminate the need for sampling shipments of Canadian-origin seed at the border, and allow certain seed importers to clean seed with monitoring by an APHIS inspector.

No economic impact will 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 will result in savings to APHIS. This rule will require that all shipments of Canadian-origin agricultural or vegetable seed be accompanied by a certificate of analysis issued by the Canadian Food Inspection Agency or by a private seed laboratory accredited by the Canadian Food Inspection Agency; that certificate of analysis precludes the need for sampling and testing those shipments of Canadian-origin seed. The certificate of analysis will confirm the seed shipment meets the noxious weed tolerances and labeling requirements of the FSA and the regulations. Therefore, APHIS will no longer have to rely on U.S. Customs Service inspectors at the Canadian border to draw samples from shipments of imported seed and mail the seed samples to APHIS' Seed Examination Facility (SEF) in Beltsville, MD, for testing. Under the provisions of this rule, the cost of the analysis and

subsequent certification will be borne by the owner or exporter of the seed, so there will be a reduction in the sampling and testing costs currently borne by APHIS. We estimate that APHIS will save over \$103,000 annually in salary and related expenditures associated with the testing of Canadian-origin seed.

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.

This final rule's requirement that Canadian-origin seed be certified prior to import into the United States will eliminate the need for the routine testing of Canadian-origin seed and thus eliminate the costs associated with that testing. Without the certificate requirement, the SEF botanist spent approximately 90 percent of his time testing Canadian-origin seed for noxious weed seeds, while his assistant spent about 50 percent of his time on this task. In terms of salaries and benefits, the costs associated with the SEF's testing of Canadian seed are estimated to exceed \$100,000 annually. With the certificate requirement for Canadian seed in place, the time and costs spent on testing Canadian seed may be shifted into the SEF's other areas of responsibility.

This rule will also result in savings in salary for the time spent by APHIS or State inspectors monitoring 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 monitoring the cleaning of each refused shipment. The savings in the inspector's monitoring time in this activity is estimated as \$1,262.

This rule also allows companies that import uncleaned seed for reconditioning and resale to enter into a compliance agreement with APHIS, which will likely yield a savings to APHIS in inspection time since only periodic inspections of these companies

will be necessary to ensure compliance with the conditions of the agreement. In fiscal year 1995, two companies in Idaho imported a total of 48 lots of seed that required cleaning; APHIS employed a contractor to monitor the cleaning of those adulterated seed lots. A company operating under a compliance agreement will not require monitoring for every lot of seed imported for cleaning, so we expect there will 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 monitoring of seed cleaning.

This 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 are approximately 6,000 seed shipments per year from Canada that will require certification as a condition of importation into the United States. For the majority of shipments, the cost of the certification does not represent an additional expense because much of the seed is likely to 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 will 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 the Canadian seed imported into the United States is imported through transactions between Canadian seed exporters and individual U.S. 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 will 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 will not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0124.

#### **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 are amended as follows:

#### **PART 201—FEDERAL SEED ACT REGULATIONS**

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

**Authority:** 7 U.S.C. 1592.

##### **§ 201.38 [Amended]**

2. Section 201.38 is 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 are removed.

4. A new 7 CFR part 361 is 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.

Carpentgrass—*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.

Guineagrass—*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 lawnglass—*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.  
 Napierglass—*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.) Reichenb.  
 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, poultard—*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; or 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/importation.** 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 laboratory.** An official laboratory 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 territorial limits of 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  
 Asparagus bean 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—*Citrullus 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—*Citrullus 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 imported 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 imported into the United States 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 commonly recognized as names of particular substances, e.g., thiram, captan, lindane, and dichlone.

(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 imported 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 of 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 imported into the United States shall be made available for examination by an APHIS inspector at the port of first arrival and shall remain at the port of first arrival until released by an APHIS inspector. 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 imported into the United States 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 monitoring of an APHIS inspector;

(iii) Cleaned under APHIS monitoring 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 the 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 false or misleading in any respect, the seed will be rejected for entry into the United States. A falsely labeled lot of seed must be:

(i) Exported from the United States;

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

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

#### **§ 361.5 Sampling of seeds.**

(a) *Sample sizes.* As provided in § 361.4(b), samples of seed will be taken from each lot of seed being imported for seeding (planting) 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 or- dinarily sampled (pounds)	Maximum weight of seed lot per- mitted entry for experimental or breeding purposes without sampling (pounds)
	(1)	(2)	(3)
<b>VEGETABLE SEED:</b>			
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
Dandelion .....	35	5	10
Dill .....	50	5	10
Eggplant .....	50	5	10
Endive .....	50	5	10

TABLE 1—Continued

Name of seed	Working weight for noxious weed examination (grams)	Maximum weight of seed lot not or- dinarily sampled (pounds)	Maximum weight of seed lot per- mitted entry for experimental or breeding purposes without sampling (pounds)
	(1)	(2)	(3)
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
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

TABLE 1—Continued

Name of seed	Working weight for noxious weed examination (grams)	Maximum weight of seed lot not or- dinarily sampled (pounds)	Maximum weight of seed lot per- mitted entry for experimental or breeding purposes without sampling (pounds)
	(1)	(2)	(3)
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
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

TABLE 1—Continued

Name of seed	Working weight for noxious weed examination (grams)	Maximum weight of seed lot not or- dinarily sampled (pounds)	Maximum weight of seed lot per- mitted entry for experimental or breeding purposes without sampling (pounds)
	(1)	(2)	(3)
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
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

TABLE 1—Continued

Name of seed	Working weight for noxious weed examination (grams)	Maximum weight of seed lot not or- dinarily sampled (pounds)	Maximum weight of seed lot per- mitted entry for experimental or breeding purposes without sampling (pounds)
	(1)	(2)	(3)
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 almum .....	150	25	100
Sorghum-sudangrass hybrid .....	500	100	1,000
Sorghgrass .....	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, woolypod .....	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
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

TABLE 1—Continued

Name of seed	Working weight for noxious weed examination (grams)	Maximum weight of seed lot not or- dinarily sampled (pounds)	Maximum weight of seed lot per- mitted entry for experimental or breeding purposes without sampling (pounds)
	(1)	(2)	(3)
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 monitoring 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  
*Orobanche* 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 alapataco* 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 entered. 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 entered. If three or more seeds are found in the second examination, the shipment from which the samples were drawn may not be entered. If three or more seeds are found in an initial examination, the shipment from which the sample was drawn may not be entered.

(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 imported into the United States from Canada for seeding (planting) purposes or cleaning must be accompanied by a certificate of analysis issued by the Canadian Food Inspection Agency or by a private seed laboratory accredited by the Canadian Food Inspection Agency. 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).

(Approved by the Office of Management and Budget under control number 0579-0124)

#### § 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



monitoring 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 laboratory, 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 monitoring 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 agreement<sup>1</sup> 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 monitoring 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 § 361.5.

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

(Approved by the Office of Management and Budget under control number 0579-0124)

#### § 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 monitoring 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 10th day of September 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### 7 CFR Part 633

#### Water Bank Program

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Final Rule.

**SUMMARY:** The Department of Agriculture Reorganization Act of 1994 authorized the establishment of the Natural Resources Conservation Service (NRCS) and transferred responsibility for the Water Bank Program (WBP) from the Agricultural Stabilization (ASCS) and Conservation Service to the NRCS, formerly the Soil Conservation Service (SCS). This final rule provides the process by which the WBP will be administered within the NRCS.

**DATES:** Effective date: September 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Robert Misso (Program Manager), (202) 720-3534.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not significant.

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the NRCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Further, because this rule merely reflects a statutory change in administrative responsibility, publication for public comment is unnecessary.

##### Environmental Evaluation

This regulatory action, which merely recognizes a transfer in administrative responsibilities, is categorically excluded by 7 CFR 1b.3(a)(1). Therefore, neither an environmental assessment nor an environmental impact statement is needed.

<sup>1</sup> 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).