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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 02–119–2]

RIN 0579–AB78

#### Importation of Small Lots of Seed Without Phytosanitary Certificates

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the nursery stock regulations to allow the importation of small lots of seed under an import permit with specific conditions, as an alternative to the current phytosanitary certificate requirement. This change is necessary because several entities that import small lots of seed—individual importers, scientists, horticultural societies, arboreta, and small businesses—have had difficulty obtaining the necessary certificates and have been adversely affected by the phytosanitary certificate requirement. The change makes it feasible for those entities to import small lots of seed and ensures prompt and consistent service for such importers while continuing to protect against the introduction of plant pests into the United States and providing the Animal and Plant Health Inspection Service with necessary information about the quality, quantity, and diversity of the imported material.

**DATES:** *Effective Date:* May 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Tschanz, Senior Staff Officer, Regulatory Coordination Staff, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; (301) 734–5306.

**SUPPLEMENTARY INFORMATION:**

#### Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds into the United States. The regulations contained in “Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products” (sections 319.37 through 319.37–14, referred to below as the regulations) prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Nursery stock, plants, seeds, and other propagative plant material that cannot be feasibly inspected, treated, or handled to prevent them from introducing plant pests new to or not widely distributed in the United States are listed in the regulations as prohibited articles. Prohibited articles may not be imported into the United States, unless imported by the U.S. Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

All other nursery stock, plants, seeds, and other propagative plant material that can be inspected, treated, or handled to prevent them from introducing plant pests are considered restricted articles. Restricted articles may be imported into the United States if they are imported in compliance with conditions that include a phytosanitary certificate and port of entry inspection and that may include the need for a permit, treatment, or postentry quarantine.

On April 29, 2004, we published in the *Federal Register* (69 FR 23451–23456, Docket No. 02–119–1) a proposed rule to amend the nursery stock regulations to allow the importation of small lots of seed under an import permit, with specific conditions, as an alternative to the current phytosanitary certificate requirement. We proposed this change because several entities that import small lots of seed—individual importers, scientists, horticultural societies, arboreta, and small businesses—have had difficulty obtaining the necessary certificates and have been adversely affected by the phytosanitary certificate requirement. Our proposed change was intended to make it feasible for those entities to import small lots of seed and ensure

prompt and consistent service for such importers while continuing to protect against the introduction of plant pests into the United States and providing the Animal and Plant Health Inspection Service (APHIS) with necessary information about the quality, quantity, and diversity of the imported material.

We solicited comments on our proposal for 60 days ending on June 28, 2004. We received 45 comments by that date, from private citizens, hobbyists, researchers, horticultural societies, industry group representatives, and foreign plant protection organizations. In all, 42 commenters generally supported the proposed rule, although 18 of these commenters suggested specific changes. Three commenters opposed the proposed rule. The issues raised by the commenters are discussed below.

Three commenters stated that the proposed changes represented a lessening of restrictions which would allow the introduction of plant pests into the United States.

We disagree. We are confident that the same assurances and information gained through the use of a phytosanitary certificate will be obtained through the permitting process described in this final rule. A phytosanitary certificate, as defined in § 319.37–1 of the regulations, is “A document relating to a restricted article, which is issued by a plant protection official of the country in which the restricted article was grown, which is issued not more than 15 days prior to shipment of the restricted article from the country in which grown, which is addressed to the plant protection service of the United States (APHIS’ Plant Protection and Quarantine [PPQ] program), which contains a description of the restricted article intended to be imported into the United States, which certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States, and which contains any specific additional declarations required under this subpart.”

The first part of that definition can be characterized as being administrative in nature (who issues the certificate, when

it is issued, and to whom it is addressed). With respect to the remainder of the definition, we offer the following comparisons:

- “Which contains a description of the restricted article intended to be imported into the United States.” This will be covered by the permit application, in which we ask for approximate quantity (which, for small lots of seed, is limited by the regulations) and kinds (botanical designations) of articles intended to be imported, and on the permit itself, which will identify the amount and nature of the articles authorized importation by the permit.

- “Which certifies that the article has been thoroughly inspected.” The permit will direct that the seeds first go to the Plant Germplasm Quarantine Center in Beltsville, MD, or to a USDA plant inspection station where a thorough inspection will occur.

- “Is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests.” The outcome of the inspection cited above will be determinative of whether the seeds are allowed entry into the United States; if pests are found, the shipment will be treated, re-exported, or destroyed.

- “Is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States.” We will ascertain this during our review of the permit application, based on the applicant’s description of the articles for which a permit is being sought.

- “And which contains any specific additional declarations required under this subpart.” Under section 319.37–4(d)(2) of this final rule, seeds that require an additional declaration (such requirements are contained in section 319.37–5 of the regulations) are not eligible for importation without a phytosanitary certificate.

Given the above, we believe that the permitting process for small lots of seed provided for in this rule will ensure a level of protection equivalent to that provided by a phytosanitary certificate.

In the proposed rule, section 319.37–4(d)(3) provided, among other things, that there be a maximum of 50 seeds of 1 taxon (taxonomic category such as genus, species, cultivar, etc.) per packet, with a maximum of 50 seed packets per shipment, and that the seed packets be in gas permeable packages. Several commenters pointed out that some seeds, such as orchid seeds, are very small in size and asked that we include a maximum weight per packet as an alternative to the maximum number of seeds per packet. Other commenters,

noting that some types of seed must be kept moist to remain viable, asked that we remove the requirement for gas permeable packaging.

We agree with the points raised by these commenters and have modified section 319.37–4(d)(3) in this final rule to allow either a maximum seed number or maximum seed weight for each taxon in a seed packet, either 50 seeds of 1 taxon per packet or 10 grams of seed of 1 taxon per packet.

We have also modified section 319.37–4(d)(3) in this final rule to allow the use of any typical seed packaging (e.g., clear plastic resealable packets, gas permeable packets, etc.). In connection with this change, we note that shipping small lots of seed in clear plastic, resealable packets, where the seed occupies less than a single layer in the packet, may potentially expedite these shipments through the inspection process, as this type of packaging allows inspectors, in most cases, to view the seed directly through the plastic, rather than opening the packets and emptying the seed for inspection.

Five commenters were concerned that the process and cost for obtaining the import permits required as outlined in the proposed rule were still too restrictive and cost prohibitive to hobbyists and seed exchange organizations.

This rule is designed to eliminate the difficulties small entities have obtaining phytosanitary certificates for small lots of seed by allowing the importation of small lots of seed under an import permit with specific conditions as an alternative to the current phytosanitary certificate requirement. However, as discussed above, in order to provide a level of protection equivalent to that provided by the phytosanitary certificate, it is necessary that we have specific requirements that must be met in order for shipments of small lots of seed to qualify for importation.

We believe the specific requirements contained in this rule are feasible for those entities, and will ensure prompt and consistent service for such importers. APHIS does not charge a fee for the issuance of the permit required under this rule. Further, the shipping costs incurred by importers of small lots of seed as a result of these changes are likely to be much less than the costs of obtaining a phytosanitary certificate as required under the current regulations, which, as noted in the proposed rule, vary by country but can be as much as \$100 or more and can be equal to several times the value of the commodity itself. These changes are expected to decrease the current

economic burden on importers of small lots of seed.

In section 319.37–4, we proposed several additional requirements that would have to be met in order for shipments of small lots of seed to qualify for importation under a permit. One of the requirements would be that the shipment must be free from soil, plant material other than seed, other foreign matter or debris, seeds in the fruit or seed pod, and living organisms such as parasitic plants, pathogens, insects, snails, or mites. One commenter suggested that we clarify this language to make it clear that this requirement does not necessitate the removal of normal integral parts or appendages of the seeds. The commenter stated that removal of these appendages is very difficult, if not impossible, and damage to the seeds while trying to remove them could be severe enough to reduce or destroy seed viability.

We believe that our inspectors will be readily able to differentiate between normal integral parts or appendages of seed and those articles listed in the proposed rule and this final rule as prohibited (e.g., plant material other than seed or other foreign matter or debris). Thus, we do not believe it is necessary to include the clarification sought by the commenter in this final rule.

In section 319.37–4, we also proposed that shipments of seed would have to be free from pesticides. One commenter suggested that we allow the importation of seeds treated with effective fungicides, such as Thiram, because much of the small lots of seed available in retail commerce abroad are already treated with fungicides.

Treated seeds are not permitted because fungicides are difficult to distinguish from one another and may mask the presence of pathogens. Also, some fungicides/pesticides are toxic and may pose health hazards to inspectors. Therefore, we believe that it is necessary to keep this restriction to protect against the introduction of plant pests into the United States.

Two commenters were concerned that prohibited or restricted seed would be imported without the proper regulatory review and encouraged APHIS to clarify the requirements that apply to the importation of small lots of such seed (e.g., genetically modified seed or potato seed).

This rule applies only to seeds that are already enterable under the current regulations. We stated in section 319.37–4(d)(2) of the proposed rule that permits in lieu of phytosanitary certificates would be available only for seed that is not of any prohibited genera

as listed in section 319.37-2 of the regulations; is not of any noxious weed species listed in 7 CFR part 360; does not require an additional declaration on a phytosanitary certificate in accordance with section 319.37-5 of the regulations; does not require treatment in accordance with section 319.37-6 of the regulations; and is eligible for importation under the regulations regarding plant pests in 7 CFR part 330 and the imported seed regulations in 7 CFR part 361.

We believe that these conditions make it clear that seed that is prohibited or subject to additional restrictions under other provisions of our regulations would not be eligible for importation under permit in lieu of a phytosanitary certificate. However, the commenter's mention of genetically modified seed has led us to include a reference to our regulations in 7 CFR part 340 regarding genetically modified organisms in section 319.37-4(d)(2) of this final rule. Specifically citing part 340 will make it clear that seeds subject to the regulations in that part are not eligible for importation under the permitting provisions described in this final rule.

One commenter suggested that we change the import permit to allow "worldwide" as an acceptable country of origin, or that we allow importers to make Internet updates to requested countries of origin on a yearly, or more frequent, basis. The commenter also suggested that we remove the "predict quantity of seeds in shipment" data element from the permit application.

Normally, we use country-of-origin information to help us determine a commodity's eligibility for importation. However, given that the regulations in section 319.37-4(d)(2) clearly spell out the kinds of seed that are eligible for importation under a small lots of seed permit (*i.e.*, the seed is not of any prohibited genera listed in section 319.37-2; is not of any noxious weed species listed in 7 CFR part 360, etc.), we believe that specific country-of-origin information in this case is not as necessary as it might be otherwise. While we would expect that an applicant would indicate a specific country or countries on the permit application if he or she had a particular source for the seeds in mind, we agree with the commenter's suggestion and will allow "worldwide" to be used as the origin of shipments covered under a small lots of seed permit and will include information to that effect in the instructions that will accompany the permit application.

In its current configuration, APHIS' Internet-based permitting mechanism—the APHIS Import Authorization

System—cannot accept amendments to or renewals of the type of permit that will be issued for small lots of seed (*i.e.*, PPQ Form 587, Application for Permit to Import Plants or Plant Products). However, the instructions that accompany PPQ Form 587 do include information and instructions for requesting an amendment to or renewal of a current permit, so the update option suggested by the commenter is also available, albeit not through the Internet at this time.

With respect to the commenter's suggestion that we remove the "predict quantity of seeds in shipment" data element from the permit application, we had expected to use that information to allow the permit specialist to determine whether the quantity of seeds the permit applicant was seeking to import was within the eligibility limits set for the small lots of seed permit. However, given that the regulations do limit the quantity of seed that may be imported under a small lots of seed permit (*i.e.*, a maximum of 50 seeds of 1 taxon per packet or a maximum weight not to exceed 10 grams of seed of 1 taxon per packet, up to a maximum of 50 packets per shipment), we agree that it is not necessary for the applicant to predict the quantity of seeds in a shipment. Because the form that will be used (PPQ Form 587) is also used for other articles, the "predict quantity" data element will remain on the form; however, the instructions that will accompany the permit application will direct applicants seeking to import seed in quantities within those eligibility limits to indicate that he or she is requesting a permit to import small lots of seed, which removes the need for the applicant to predict quantities in such cases.

PPQ will update its "Plants and Plant Products Permits" Web site (<http://www.aphis.usda.gov/ppq/permits/plantproducts/nursery.html>) to provide information on those plant taxa (*e.g.*, noxious weeds, plants that are prohibited or otherwise restricted under the regulations, etc.) that are not eligible for import under the small lots of seed permit. This Web site will also contain instructions for obtaining and completing a permit application and requesting an amendment to or renewal of a current permit, as well as other related information.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule 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 significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In this document, we are amending the nursery stock regulations to allow the importation of small lots of seed under an import permit with specific conditions, as an alternative to the current phytosanitary certificate requirement. This change is necessary because several entities that import small lots of seed—individual importers, scientists, horticultural societies, arboreta, and small businesses—have had difficulty obtaining the necessary certificates and have been adversely affected by the phytosanitary certificate requirement. The change makes it feasible for those entities to import small lots of seed and ensures prompt and consistent service for such importers while continuing to protect against the introduction of plant pests into the United States and providing APHIS with necessary information about the quality, quantity, and diversity of the imported material.

For this final rule, we have prepared an economic analysis, which is set out below. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects of this rule on small entities as required by the Regulatory Flexibility Act.

Seed production and trade play important roles in the U.S. economy. The total market value of seeds purchased by farmers in 2001 was about \$7.6 billion, and cash receipts from these crops were valued at about \$96 billion for the same year.<sup>1</sup> The United States is a net exporter of seeds. During the 2001-2002 seed marketing year, which runs from July through June, the United States exported 1,963 million pounds of planting seeds, valued at approximately \$823 million, and imported 653 million pounds of seeds, valued at approximately \$398 million.

Although U.S. exports of planting seeds are widely distributed among several different trading partners, there are 10 countries that together account for about 75 percent of the total U.S. seed exports (table 1). Imports of planting seed into the United States also come from several different countries. The top 10 suppliers together account for approximately 84 percent of the total U.S. imports of planting seed (table 1).

<sup>1</sup> USDA/National Agricultural Statistics Service, Agricultural Statistics 2002, June 2002.

TABLE 1.—U.S. EXPORTS AND IMPORTS OF PLANTING SEEDS IN 2001–2002

| U.S. exports (in million \$) |       | U.S. imports (in million \$) |       |
|------------------------------|-------|------------------------------|-------|
| Mexico .....                 | 249.9 | Chile .....                  | 105.8 |
| Canada .....                 | 125.6 | Mexico .....                 | 105   |
| Japan .....                  | 59.1  | Netherlands .....            | 36.5  |
| Italy .....                  | 40.6  | Argentina .....              | 21.2  |
| France .....                 | 36.6  | China .....                  | 17.9  |
| Netherlands .....            | 32.2  | Japan .....                  | 14    |
| Spain .....                  | 24.2  | Finland .....                | 11.1  |
| China .....                  | 16.1  | Australia .....              | 8.3   |
| Korea .....                  | 15.4  | Denmark .....                | 7.5   |
| Saudi Arabia .....           | 13.8  | India .....                  | 7.1   |

Source: USDA/Foreign Agricultural Service, *Foreign Agricultural Trade of the United States*, Revised March 2003; USDA/Foreign Agricultural Service, U.S. Planting Seed Trade Archives, August 2002.

Many varieties of seed are traded between the United States and other countries. The major categories include grasses, other forages, pulses, vegetables, field crops, and miscellaneous varieties of plants (flowers, trees, and shrubs). Field crops are the largest category of seed exports and imports (table 2).

TABLE 2.—TYPES AND VALUE OF SEED TRADED BETWEEN THE UNITED STATES AND TRADING PARTNERS

| Type of seed        | Export (in million \$) | Import (in million \$) |
|---------------------|------------------------|------------------------|
| Field crops .....   | 315                    | 131                    |
| Vegetable .....     | 251                    | 104                    |
| Grasses .....       | 103                    | 35                     |
| Miscellaneous ..... | 67                     | 60                     |
| Forage .....        | 49                     | 21                     |
| Pulses .....        | 40                     | 49                     |

Source: USDA/Foreign Agricultural Service, *Foreign Agricultural Trade of the United States*, Revised March 2003; USDA/Foreign Agricultural Service, U.S. Planting Seed Trade Archives, August 2002.

The availability of seeds of good quality contributes to domestic production of food grains, field crops, cotton, oil crops, vegetables, herbs, flowers, trees, and shrubs. There are close to 900 seed companies in the United States that engage in certified seed trade (domestic and international). In addition, specialized groups such as horticultural societies, arboreta, and individual hobbyists collect, grow, exhibit, preserve, exchange, and donate specialty seeds and often import small lots of seed.

**Costs and Benefits**

The changes in this rule will not result in any increase in mandatory spending for the Federal Government, which already provides permitting and port of entry inspection services. The changes in procedures for small lots of seed will be accomplished through normal workload adjustment; although specialists may be spending slightly more time in the near future issuing permits for and inspecting seed packages than in the past, we will handle this work in the same way we handle all normal fluctuations of work for permitting and inspection. Our permitting and inspection costs overall

will not increase as a result of this action.

The changes are expected to generate several benefits without increasing costs for affected private entities. Plant specialists, gardeners, arboreta, and horticultural societies will be able to more widely acquire new kinds of seeds to expand plant diversity, such as plant species that are drought- or disease-resistant or other unique types of plants. Private gardeners will benefit from an increased availability of special seeds. Also, the entry of imported seeds through plant inspection stations will provide APHIS with a more accurate picture of seed import activity, using data generated from permit issuance and the actual importation data from U.S. ports of entry. Finally, we expect that the risk of the introduction or dissemination of plant diseases will be reduced, to the extent that any seeds that are currently being imported illegally because of the costs or other difficulties associated with obtaining a phytosanitary certificate are replaced by seeds that are legally imported under permit and subjected to inspection. Compared to the costs associated with obtaining a phytosanitary certificate, shipping costs, which will be discussed in the following paragraphs, should not

be a burden on importers of small lots of seed and should not be appreciably more than shipping costs importers must already pay in order to import seeds from overseas suppliers.

**Shipping Costs**

As discussed in the proposed rule and as provided in this final rule, importers will be responsible for transportation costs from the overseas seed supplier to the PPQ plant inspection station and the costs of shipping the seed from the plant inspection station to the importer's address. APHIS-PPQ has estimated shipping costs for importers of small lots of seed using a worst case scenario of a shipment of 50 packets of 50 corn seeds per packet (the maximum shipment size that would be allowed under this rule), which would weigh less than 2 pounds. Currently, this shipment would cost \$4.49 for parcel post and \$5.75 for priority mail to ship the seeds from the inspection station at Beltsville, MD, to the farthest destination within the United States. Corn seed was used in this example because it is considerably heavier than most ornamental seed, which is the type expected to be shipped. Shipping costs for smaller, lightweight seeds would be much less than those in the example.

Currently, importers who import articles that require inspection, such as will be the case with small lots of seed, cover the costs of shipping the article from the plant inspection station to the importer's address, using one of two options: (1) Provide a shipping container and the estimated amount of postage necessary to the overseas supplier who would then send it along with the shipment to the plant inspection station, or (2) provide an account number for the United States Postal Service or for a commercial shipping service to be charged by the inspectors at the plant inspection station.

In general, the shipping costs incurred by importers of small lots of seed as a result of these changes would be much less than the costs of obtaining a phytosanitary certificate as required under the current regulations, which, as noted previously, vary by country but can be as much as \$100 or more and can be equal to several times the value of the commodity itself. These changes are expected to decrease the current economic burden on importers of small lots of seed.

#### Impact on Small Entities

The Small Business Administration (SBA) has established size standards based on the North American Industry Classification System (NAICS) to determine and to classify which economic entities can be considered small entities. The SBA classifies seed companies (NAICS 422910)<sup>2</sup> as small if they employ 100 or fewer workers. There are close to 900 seed companies that are involved in certified seed trade (domestic and international) in the United States. About 97 percent of these companies would be considered small by SBA standards. In addition, groups such as horticultural societies, arboreta, and individual hobbyists collect, grow, exhibit, preserve, exchange, donate, and import small lots of seeds. The size of these entities is difficult to determine, and the exact number of seed importers is not known. This final rule will primarily affect those entities who import small lots of seed. Based on information that we have received from several horticultural societies and from various individuals and small businesses that currently import small lots of seed, we expect approximately 2,000 import permit applications over the first 5 years, so approximately 400 import permit applications are expected per year.

<sup>2</sup> U.S. Census Bureau, 1997 Economic Census, Wholesale Trade-Subject Series, August 2000.

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 final 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 rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0285.

#### Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

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

**Authority:** 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.37-3 is amended as follows:

■ a. In paragraph (a)(16), by removing the period at the end of the paragraph and adding a semicolon in its place.

■ b. In paragraph (a)(17), by removing the period at the end of the paragraph

and adding the word “; and” in its place.

■ c. By adding a new paragraph (a)(18) to read as set forth below.

#### § 319.37-3 Permits.

(a) \* \* \*

(18) Small lots of seed imported in accordance with § 319.37-4(d) of this subpart.

\* \* \* \* \*

■ 3. Section 319.37-4 is amended as follows:

■ a. In paragraph (a), by removing the word “Any” and adding the words “Except for small lots of seed imported in accordance with paragraph (d) of this section, any” in its place.

■ b. By adding a new paragraph (d) to read as set forth below.

■ c. By adding an OMB control number citation at the end of the section to read as set forth below.

#### § 319.37-4 Inspection, treatment, and phytosanitary certificates of inspection.

\* \* \* \* \*

(d) *Small lots of seed.* Lots of seed may be imported without a phytosanitary certificate required by paragraph (a) of this section under the following conditions:

(1) The importation of the seed is authorized by a written permit issued in accordance with § 319.37-3.

(2) The seed is not of any prohibited genera listed in § 319.37-2; is not of any noxious weed species listed in part 360 of this chapter; does not require an additional declaration on a phytosanitary certificate in accordance with § 319.37-5; does not require treatment in accordance with § 319.37-6; is not restricted under the regulations in parts 330 and 340 of this chapter; and meets the requirements of part 361 of this chapter.

(3) The seed meets the following packaging and shipping requirements:

(i) Each seed packet is clearly labeled with the name of the collector/shipper, the country of origin, and the scientific name at least to the genus, and preferably to the species, level;

(ii) There are a maximum of 50 seeds of 1 taxon (taxonomic category such as genus, species, cultivar, etc.) per packet; or a maximum weight not to exceed 10 grams of seed of 1 taxon per packet;

(iii) There are a maximum of 50 seed packets per shipment;

(iv) The seeds are free from pesticides;

(v) The seeds are securely packaged in packets or envelopes and sealed to prevent spillage;

(vi) The shipment is free from soil, plant material other than seed, other foreign matter or debris, seeds in the fruit or seed pod, and living organisms

such as parasitic plants, pathogens, insects, snails, mites; and

(vii) At the time of importation, the shipment is sent to either the Plant Germplasm Quarantine Center in Beltsville, MD, or a port of entry listed in § 319.37-14(b) and designated by an asterisk.

(Approved by the Office of Management and Budget under control number 0579-0285)

Done in Washington, DC, this 6th day of April 2006.

**Charles D. Lambert,**

*Acting Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 06-3554 Filed 4-12-06; 8:45 am]

**BILLING CODE 3410-34-P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 110

RIN 3150-AH89

#### Revision of NRC Form 7, Application for NRC Export/Import License, Amendment, or Renewal

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations that govern the export and import of nuclear material and equipment concerning the use of NRC Form 7, "Application for NRC Export/Import License, Amendment, or Renewal." Recently, the Commission revised NRC Form 7 to consolidate all license requests (i.e., applications for export, import, combined export/import, amendments and renewals) in one application form. Previously, NRC Form 7 was used only for applications for export of nuclear material and equipment. Import license applications, production or utilization facility export applications, and license amendment and renewal applications were filed by letter. As a result of the revision, these requests previously made by letter, now will be made using NRC Form 7. The purpose of this change is to amend the regulations that govern export and import of nuclear material and equipment to reflect that all license requests are to be made using NRC Form 7, as revised.

**DATES:** The final rule will become effective June 27, 2006, unless a significant adverse comment on the direct final rule is received by May 15, 2006. If the rule is withdrawn as a result of such a comment, timely notice of the withdrawal will be published in the

**Federal Register.** Comments received after May 15, 2006 will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number RIN 3150-AH89 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submissions.

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to:* [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov). Comments also can be submitted via the Federal eRulemaking Portal <http://regulations.gov>.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents

located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [PDR@nrc.gov](mailto:PDR@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Brooke G. Smith, International Policy Analyst, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2347, e-mail [bgs@nrc.gov](mailto:bgs@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. The Direct Final Rule Process

This direct final rule amends 10 CFR part 110 to reflect revisions made to NRC Form 7 regarding the method for filing import and export license requests. All licensing requests, i.e., exports, imports, combined export/import, amendment, and renewal applications will be made using revised NRC Form 7. Import license applications, production or utilization facility export license applications, and import/export license amendment and renewal applications will no longer be filed by letter. This direct final rule codifies the revisions to NRC Form 7 in 10 CFR part 110.

Because the NRC believes that this action is not controversial, the NRC is using the direct final rule process for this rule. The direct final rule will become effective on June 27, 2006. However, if the NRC receives a significant adverse comment on this direct final rule by May 15, 2006, the NRC will publish a document that withdraws this action. In that event, the comments received in response to these amendments would then be considered as comments on the companion proposed rule published elsewhere in this **Federal Register**. The comments will be addressed in a later final rule based on that proposed rule. Unless the modifications to the proposed rule are significant enough to require that it be republished as a proposed rule, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;