AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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.

[62 FR 48460, Sept. 16, 1997, as amended at 64 FR 12884, Mar. 16, 1999; 65 FR 33743, May 25, 2000; 71 FR 35381, June 20, 2006; 74 FR 53400, Oct. 19, 2009; 75 FR 68956, Nov. 10, 2010]

§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[1] 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.

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

§ 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