

writing an acknowledgment of the denial or withdrawal, and a statement of intent to appeal, within 10 days after receiving written notification of the denial or withdrawal. The applicant may request additional time to prepare the appeal. The appeal must state all of the facts and reasons upon which the person relies to assert that the permit was wrongfully denied or withdrawn. The Administrator will grant or deny the appeal in writing, stating the reasons for the decision as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

(1) *Amendment of permits*—(1) *Amendment at responsible person's request.* If the responsible person determines that circumstances have changed since the permit was initially issued and wishes the permit to be amended accordingly, the responsible person must request the amendment by contacting APHIS directly. The responsible person will have to provide supporting information justifying the amendment. APHIS will review the amendment request, and will amend the permit if APHIS determines that relatively minor changes are necessary. Requests for more substantive changes will require a new permit application. Prior to issuance of an amended permit, the responsible person will be required to agree in writing or electronically that he or she and his or her agents will comply with the conditions of the amended permit. If the responsible person does not agree to the conditions, the amendment will be denied.

(2) *Amendment initiated by APHIS.* APHIS may amend any permit and its conditions at any time, upon determining that the amendment is needed to address plant pest risks presented by the organism or the activities allowed under the permit. APHIS will notify the responsible person of the amendment to the permit and, as soon as circumstances allow, the reason(s) for it. The responsible person may have to agree in writing or electronically that he or she and his or her agents will comply with the conditions of the amended permit before APHIS will

issue it. If APHIS requests such an agreement, and the responsible person does not accept it, the existing permit will be withdrawn.

(m) *Shipping under a permit.* (1) All shipments of organisms under permit must be secure shipments. Organisms under permit must be shipped in accordance with the regulations in 49 CFR part 178.

(2) The container must be accompanied by a document that includes the names and contact details for the sender and recipient.

(3) For any organism to be imported into the United States, the outmost container must bear information regarding the nature and quantity of the contents; the country (or countries) and locality (localities) where collected, developed, manufactured, reared, cultivated, and cultured (as applicable); the name and address of the shipper, owner, or person shipping or forwarding the organism; the name, address, and telephone number of the consignee; the identifying shipper's mark and number; and the permit number authorizing the importation. For organisms imported under permits by mail, the container must also be addressed to a plant inspection station listed in the USDA Plants for Planting Manual, which can be accessed at: https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf. All imported containers of organisms under permits must be accompanied by an invoice or packing list indicating the contents of the shipment.

(4) Following the completion of the shipment, all packaging material, shipping containers, and any other material accompanying the organism will be devitalized consistent with supplemental permit conditions, or disposed of to prevent unauthorized release.

(n) *Applicability date:* This section is applicable beginning April 5, 2021.

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§ 340.6 Record retention, compliance, and enforcement.

(a) *Recordkeeping.* Responsible persons and their agents are required to

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establish, keep, and make available to APHIS the following records:

(1) Records and reports required under §340.5(i);

(2) Addresses and any other information (e.g., GPS coordinates, maps) needed to identify all locations where the organism under permit was stored or used, including all contained facilities and environmental release locations;

(3) A copy of the APHIS permit authorizing the permitted activity; and

(4) Legible copies of contracts (including amendments to contracts) between the responsible person and agents that conduct activities subject to this part for the responsible person, and copies of documents relating to agreements made without a written contract.

(b) *Record retention.* Records indicating that an organism under permit that was imported or moved interstate reached its intended destination must be retained for at least 2 years. All other records related to a permit must be retained for 5 years following the expiration of the permit, unless a longer retention period is determined to be needed by the Administrator and is documented in the supplemental permit conditions.

(c) *Compliance and enforcement.* (1) Responsible persons and their agents must comply with all of the requirements of this part. Failure to comply with any of the requirements of this part may result in any or all of the following:

(i) Denial of a permit application or withdrawal of a permit in accordance with §340.5(j);

(ii) Application of remedial measures in accordance with the Plant Protection Act (7 U.S.C. 7701 *et seq.*); and

(iii) Criminal and/or civil penalties in accordance with the Plant Protection Act (7 U.S.C. 7701 *et seq.*).

(2) Prior to the issuance of a complaint seeking a civil penalty, the Administrator may enter into a stipulation, in accordance with §380.10 of this chapter.

(d) *Liability for acts of an agent.* For purposes of enforcing this part, the act, omission, or failure of any agent for a responsible person may be deemed also

to be the act, omission, or failure of the responsible person.

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§340.7 Confidential business information.

Persons including confidential business information (CBI) in any document submitted to APHIS under this part should do so in the following manner. If there are portions of a document deemed to contain confidential business information, those portions must be identified, and each page containing such information must be marked "CBI Copy." A second copy of the document must be submitted with all such CBI deleted, and each page where the CBI was deleted must be marked "CBI Deleted." In addition, any person submitting CBI must justify how each piece of information requested to be treated as CBI is a trade secret or, if not a trade secret, is either commercial or financial information that is privileged or confidential.

§340.8 Costs and charges.

The services of the inspector related to carrying out this part and provided during regularly assigned hours of duty and at the usual places of duty will be furnished by APHIS without cost to the responsible person.¹ The U.S. Department of Agriculture will not be responsible for any costs or charges incidental to inspections or compliance with the provisions of this part, other than for the services of the inspector.

PART 351—IMPORTATION OF PLANTS OR PLANT PRODUCTS BY MAIL

Sec.

351.1 Joint treatment generally.

351.2 Location of inspectors.

351.3 Procedure on arrival.

351.4 Records.

351.5 Return or destruction.

351.6 Packages in closed mail dispatches.

¹The Department's provisions relating to overtime charges for an inspector's services are set forth in part 354 of this chapter.