

USA

7 CFR-Teil 319 Unterabschnitt C – Ausnahme-Einfuhrgenehmigungen, Unterabschnitt D - Genehmigungen

(Title 7 Part 319—Foreign quarantine notices Subpart C—Controlled Import Permits)

Quelle: <https://www.ecfr.gov/cgi-bin/text-idx?SID=1aaf2bcf15eb7e2cb7d3bdb260bffee0&mc=true&node=pt7.5.319&rgn=div5#sp7.5.319.c>

(Inoffizielle Konsolidierung, Julius Kühn-Institut, Bundesforschungsinstitut für Kulturpflanzen, Institut für nationale und internationale Angelegenheiten der Pflanzengesundheit, 14.10.2020)

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Die Wiedergabe der Vorschriften erfolgt ohne Gewähr.

Electronic Code of Federal Regulations

Current as of October 9, 2020

Subpart C—Controlled Import Permits

SOURCE: 78 FR 25568, May 2, 2013, unless otherwise noted. Redesignated at 84 FR 2428, Feb. 7, 2019.

§319.6 Controlled import permits.

(a) *Definitions.*

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Developmental purposes. The evaluation, monitoring, or verification of plant material for plant health risks and/or the adaptability of the material for certain uses or environments.

Experimental purposes. Scientific testing which utilizes collected data and employs analytical processes under controlled conditions to create qualitative or quantitative results.

Therapeutic purposes. The application of specific scientific processes designed to eliminate, isolate, or remove potential plant pests or diseases.

(b) *Purpose and scope.* The regulations in this part prohibit or restrict the importation into the United States of certain plants, plant products, and other articles to prevent the introduction and dissemination of plant pests and noxious weeds within and throughout the United States. The regulations in this subpart provide a process under which a controlled import permit (CIP) may be issued to authorize the importation, for experimental, therapeutic, or developmental purposes, of an article whose importation is prohibited under this part. A CIP may also be issued to authorize, for those same purposes, the importation of an article under conditions that differ from those prescribed in the relevant regulations in this part.

(c) *Application process.* Applications for a CIP are available without charge from the Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ), Permit Unit, 4700 River Road Unit 136, Riverdale, MD 20737-1236, or from local PPQ offices. Applications may be submitted by mail, by fax, or electronically and must be submitted at least 60 days prior to arrival of the article at

the port of entry. Mailed applications must be submitted to the address above, faxed applications may be submitted to 301-734-4300, and electronic applications may be submitted through the ePermits Web site at <https://epermits.aphis.usda.gov/epermits>.

(1) The completed application for a CIP must provide the following information:

- (i) Name, address in the United States, and contact information of the applicant;
- (ii) Identity (common and botanical [genus and species] names) of the plant material to be imported, quantity of importation, country of origin, and country shipped from;
- (iii) Intended experimental, therapeutic, or developmental purpose for the importation; and
- (iv) Intended ports of export and entry, means of conveyance, and estimated date of arrival.

(2) APHIS may issue a CIP if the Administrator determines that the plant pest risks associated with the plant material and its intended experimental, therapeutic, or developmental use can be effectively mitigated. The CIP will contain the applicable conditions for importation and subsequent handling of the plant material if it is deemed eligible to be imported into the United States, including the specifications for the facility where the plant will be held. The plant material may be imported only if all applicable requirements are met.

(d) *Shipping conditions.* Consignments of plant material to be offered for importation under a CIP must meet the following requirements, unless otherwise specified under the conditions of the CIP:

(1) The plant material must be selected from apparently disease-free and pest-free sources.

(2) The plant material must be free of soil, other foreign matter or debris, other prohibited plants, noxious weed seeds, and living organisms such as parasitic plants, pathogens, insects, snails, and mites.

(3) Fungicides, insecticides, and other treatments such as coatings, dips, or sprayings must not be applied before shipment, unless otherwise specified. Plant materials may be refused entry if they are difficult or hazardous to inspect because of the presence of such treatments. Plant materials must not be wrapped or otherwise packaged in a manner that impedes or prevents adequate inspection or treatment.

(4) The plant material must be moved in an enclosed container or one completely enclosed by a covering adequate to prevent the possible escape or introduction of plant pests during shipment. Any packing material used in the consignment of the plant material must meet the requirements of §319.37-11, and wood packing material used in the consignment must meet the requirements of §319.40-3(b) and (c).

(5) Consignments may be shipped as cargo, by mail or air freight, or hand-carried, as specified in the conditions of the CIP.

(6) The plant material must be offered for importation at the port of entry or plant inspection station as specified in the conditions of the CIP.

(7) A copy of the CIP must accompany each consignment, and all consignments must be labeled in accordance with instructions in the CIP.

(8) Each consignment must be accompanied by an invoice or packing list indicating its contents.

(e) *Post-importation conditions.* (1) At the approved facility where the plant material will be maintained following its importation, plant material imported under a CIP must be identified and labeled as quarantined material to be used only in accordance with a valid CIP.

(2) Plant material must be stored in a secure place or in the manner indicated in the CIP and be under the supervision and control of the permit holder. During regular business hours, properly identified officials, either Federal or State, must be allowed to inspect the plant material and the facilities in which the plant material is maintained.

(3) The permit holder must keep the permit valid for the duration of the authorized experimental, therapeutic, or developmental purpose. The PPQ Permit Unit must be informed of a change in contact information for the permit holder within 10 business days of such change.

(4) Plant material imported under a CIP must not be moved or distributed to another person without prior authorization from the PPQ Permit Unit.

(5) Should the permit holder leave the institution in which the plant material imported under a CIP is kept, the plant material must be destroyed unless, prior to the departure of the original permit holder, another person assumes responsibility for the continued maintenance of the plant material and such person obtains a new CIP for the plant material. Should the permit holder be otherwise unavailable to maintain the plant material for which the CIP was issued, the plant material must be destroyed unless another person assumes responsibility for the continued maintenance of the plant material and such person obtains a new CIP for the plant material. Permission to move or distribute plant material that was authorized for importation under a CIP to another person must be obtained by contacting the PPQ Permit Unit.

(6) CIPs issued by APHIS are valid for a period of 1 year. The permittee may request the existing permit be renewed for up to an additional 2 years prior to the expiration of the CIP and if no adverse indications exist from the previous year.

(f) Failure to comply with all of the conditions specified in the CIP or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of future permits, and civil or criminal penalties for the permit holder.

(g) *Denial, withdrawal, cancellation, or revocation of permit.* The Administrator may deny a permit application in accordance with §319.7-3, and a permit may be withdrawn, canceled, or revoked in accordance with §319.7-4.

(1) *Action upon cancellation or revocation of permit.* Upon cancellation or revocation of a permit, the permittee must surrender, destroy, or remove all regulated plant material covered by the permit in accordance with §319.7-4(e).

(2) *Appeal of denial or revocation.* Any person whose application for a permit has been denied or whose permit has been revoked may appeal the denial or revocation in accordance with §319.7-5.

(Approved by the Office of Management and Budget under control number 0579-0384)

[78 FR 25568, May 2, 2013, as amended at 79 FR 19807, Apr. 10, 2014; 81 FR 40150, June 21, 2016; 83 FR 11855, Mar. 19, 2018]

Subpart D—Permits: Allocation, Issuance, Denial, and Revocation

SOURCE: 78 FR 19807, Apr. 10, 2014, unless otherwise noted. Redesignated at 84 FR 2428, Feb. 7, 2019.

§319.7 Definitions.

The following definitions apply to this subpart:

Administrative instructions. Published documents related to the enforcement of this part and issued under authority of the Plant Protection Act, as amended (7 U.S.C. 7701 *et seq.*), by the Administrator.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Applicant. A person at least 18 years of age who, on behalf of him- or herself or another person, submits an application for a permit to import into the United States or move interstate a regulated article in accordance with this part.

Approved. Approved by the Administrator of the Animal and Plant Health Inspection Service.

Article. Any material or tangible objects that could harbor or be a vector of plant pests or noxious weeds.

Consignment. A quantity of plants, plant products, and/or other articles being moved from one country to another authorized when required, by a single permit. A consignment may be composed of one or more commodities or lots.

Country of origin. The country where the plants, or plants from which the plant products are derived, were grown or where the non-plant articles were produced.

Enter, entry. To move into, or the act of movement into, the commerce of the United States.

Import, importation. To move into, or the act of movement into, the territorial limits of the United States.

Inspector. Any individual authorized by the Administrator of the Animal and Plant Health Inspection Service or the Commissioner of the Bureau of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

Intended use. The purpose for the importation of the regulated article, including, but not limited to, consumption, propagation, or research purposes.

Lot. All the regulated articles on a single means of conveyance that are derived from the same species of plant or are the same type of non-plant article, were subjected to the same treatments prior to importation, and are consigned to the same person.

Means of conveyance. Any personal property used for or intended for use for the movement of any other personal property.

Move. To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive to carry, enter, import, mail, ship, or transport; to release into the environment; or to allow any of the activities described in this definition.

Oral authorization. Verbal permission to import that may be granted by an inspector at the port of entry.

Permit. A written authorization, including by electronic methods, to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Administrator.

Permittee. The person who, on behalf of self or another person, is legally the importer of an article, meets the requirements of §319.7-2(f), and is responsible for compliance with the conditions for the importation that is the subject of a permit issued in accordance with this part.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Plant pest. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan; a nonhuman animal; a parasitic plant; a bacterium; a fungus; a virus or viroid; an infectious agent or other pathogen; or any article similar to or allied with any of the foregoing enumerated articles.

Plant product. Any flower, fruit, vegetable, root, bulb, seed, or other plant part that is not included in the definition of *plant*, or any manufactured or processed plant or plant part.

Port of entry. A port at which a specified shipment or means of conveyance is accepted for entry or admitted without entry into the United States for transit purposes.

Port of first arrival. The area (such as a seaport, airport, or land border) where a person or means of conveyance first arrives in the United States, and where inspection of regulated articles may be carried out by inspectors.

PPQ. The Plant Protection and Quarantine Program, Animal and Plant Health Inspection Service of the United States Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines and regulations.

Regulated article. Any material or tangible object regulated by this part for entry into the United States or interstate movement.

Soil. The unconsolidated material from the earth's surface that consists of rock and mineral particles mixed with organic material and that supports or is capable of supporting biotic communities.

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

Treatment. A procedure approved by the Administrator for neutralizing infestations or infections of plant pests or diseases, such as fumigation, application of chemicals or dry or moist heat, or processing, utilization, or storage.

United States. All of the States.

§319.7-1 Applying for a permit.

(a) Persons who wish to import regulated articles into the United States must apply for a permit, unless the regulated articles are not subject to a requirement under this part that a permit be issued prior to a consignment's arrival. An applicant for a permit to import regulated articles into the United States in accordance with this part must be:

- (1) Capable of acting in the capacity of the permittee in accordance with §319.7-2(e), or must designate a permittee who is so capable should the permit be issued;
- (2) Applying for a permit on behalf of self or on behalf of another person as permittee; and
- (3) At least 18 years of age.

(b) Permit applications must be submitted by the applicant in writing or electronically through one of the means listed at http://www.aphis.usda.gov/plant__health/permits/index.shtml in advance of the action(s) proposed on the permit application.

(c) The application for a permit must contain the following information:

- (1) Legal name, address, and contact information of the applicant, and affirmation by the applicant that the applicant is at least 18 years of age;
- (2) The same information of the permittee if different from the applicant, and, if the permittee is an individual, affirmation by the permittee that the permittee is at least 18 years of age;
- (3) Specific type of regulated article (common and scientific names, if applicable);
- (4) Country of origin;
- (5) Intended use of the regulated article;
- (6) Intended port(s) of first arrival; and
- (7) A description of any processing, treatment, or handling of the regulated article to be performed prior to or following importation, including the location where any processing or treatment was or will be performed and the names and dosage of any chemical employed in treatments of the regulated article.

(d) The application for a permit may also require the following information:

- (1) Means of conveyance;
- (2) Quantity of the regulated article;
- (3) Estimated date of arrival;
- (4) Name, address, and contact information of any broker or subsequent custodian of the regulated article;
- (5) Exporting country from which the article is to be moved, when not the country of origin; and
- (6) Any other information determined to be necessary by APHIS to inform the decision to issue the permit.

(e) Application for a permit to import regulated articles into the United States must be submitted at least 30 days prior to arrival of the article at the port of entry.

(1) If, through no fault of the importer, a consignment of regulated articles subject to a requirement under this part that a permit be issued prior to a consignment's arrival arrives at a U.S. port before a permit is received, the consignment may be held, under suitable safeguards prescribed by the inspector, in custody at the risk and expense of the importer pending issuance of a permit or authorization from APHIS.

(2) An oral authorization may be granted by an inspector at the port of entry for a consignment, provided that:

(i) All applicable entry requirements are met;

(ii) Proof of application for a written permit is provided to the inspector; and

(iii) PPQ verifies that the application for a written permit has been received and that PPQ intends to issue the permit.

§319.7-2 Issuance of permits and labels.

(a) Upon receipt of an application, APHIS will issue a permit if, after review of the application, APHIS determines that the regulated articles are eligible to be imported into the United States under any applicable conditions. The permit will specify the applicable conditions of entry and the port of entry, and a copy will be provided to the permittee. The permit will only be valid for the time period indicated on the permit.

(b) The applicant for a permit for the importation of regulated articles into the United States must designate the person who will be named as the permittee upon the permit's issuance. The applicant and the permittee may be the same person or different persons.

(c) The act, omission, or failure of the permittee as an officer, agent, or person acting for or employed by any other person within the scope of his or her employment or office will be deemed also to be the act, omission, or failure of the other person.

(d) Failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of any future permits, and civil or criminal penalties for the permittee.

(e) The permittee will remain responsible for the consignment regardless of any delegation to a subsequent custodian of the importation.

(f) A permittee must:

(1) If an individual, be at least 18 years of age and have and maintain an address in the United States that is specified on the permit and be physically present during normal business hours at that address during any periods when articles are being imported or moved interstate under the permit; or

(2) If another legal entity, maintain an address or business office in the United States with a designated individual for service of process; and

(3) Serve as the contact for the purpose of communications associated with the movement of the regulated article for the duration of the permit. The PPQ Permit Unit must be informed of a change in contact information for the permittee within 10 business days of such change;

(4) Ensure compliance with the applicable regulatory requirements and permit conditions associated with the movement of the regulated article for the duration of the permit;

(5) Provide written or electronic acknowledgment and acceptance of permit conditions when APHIS requests such acknowledgment;

(6) Serve as the primary contact for communication with APHIS regarding the permit; and

(7) Maintain all conditions of the permit for the entirety of its prescribed duration.

(g) The regulated article may be imported only if all applicable requirements of the permit issued for the importation of the regulated article or any other documents or instructions issued by APHIS are met and complied with as determined by APHIS.

(h) In accordance with the regulations in this part, labels may be issued to the permittee for the importation of regulated articles. Such labels may contain information about the shipment's nature, origin, movement conditions, or other matters relevant to the permit and will indicate that the importation is authorized under the conditions specified in the permit.

(1) If issued, the quantity of labels will be sufficient for the permittee to attach one to each parcel. Labels must be affixed to the outer packaging of the parcel.

(2) Importations without such required labels will be refused entry into the United States, unless a label is not required and not issued for the importation.

(i) Even if a permit has been issued for the importation of a regulated article, the regulated article may be imported only if an inspector at the port of entry determines that no remedial measures pursuant to the Plant Protection Act are necessary to mitigate or address any plant pest or noxious weed risks.¹

¹An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, and other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(j) A permit application may be withdrawn at the request of the applicant prior to the issuance of the permit.

(k) A permit may be canceled after issuance at the request of the permittee.

(l) A permit may be amended if APHIS finds that the permit is incomplete or contains factual errors.

(m) In accordance with Section 7734 of the Plant Protection Act, as amended (7 U.S.C. 7701 *et seq.*), the actions, omissions, or failures of any agent of the permittee may be deemed the actions, omissions, or failures of a permittee as well; and that failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of any future permits, and civil or criminal penalties for the permittee.

§319.7-3 Denial of permits.

(a) APHIS may deny an application for a permit to import a regulated article into the United States. A denial, including the reason for the denial, will be provided in writing, including by electronic methods, to the applicant as promptly as circumstances permit. The denial of a permit may be appealed in accordance with §319.7-5.

(b) APHIS may deny an application for a permit to import a regulated article:

(1) If APHIS determines that the applicant is not likely to abide by permit conditions. Factors that may lead to such a determination include, but are not limited to, the following:

- (i) The applicant, or a partnership, firm, corporation, or other legal entity in which the applicant has a substantial interest, financial or otherwise, has not complied with any permit that was previously issued by APHIS;
 - (ii) APHIS determines that issuing the permit would circumvent any order revoking or denying a permit under the Plant Protection Act;
 - (iii) APHIS determines that the applicant has previously failed to comply with any APHIS regulation;
 - (iv) APHIS determines that the applicant has previously failed to comply with any Federal, State, or local law, regulation, or instruction concerning the importation of prohibited or restricted foreign agricultural products;
 - (v) APHIS determines that the applicant has failed to comply with the laws or regulations of a national plant protection organization or equivalent body, as these pertain to plant health;
 - (vi) APHIS determines that the applicant has made false or fraudulent statements or provided false or fraudulent records to APHIS; or
 - (vii) The applicant has been convicted or has pled nolo contendere to any crime involving fraud, bribery, extortion, or any other crime involving a lack of integrity.
- (2) If the application for a permit contains information that is found to be materially false, fraudulent, deceptive, or misrepresentative;
- (3) If APHIS concludes that the actions proposed under the permit would present an unacceptable risk to plants and plant products because of the potential for introduction or dissemination of a plant pest or noxious weed within the United States;
- (4) If the importation is adverse to the conduct of an eradication, suppression, control, or phytosanitary program of APHIS or a program recognized by APHIS;
- (5) If the importation is not in compliance with any applicable import regulations or any administrative instructions or measures, including, but not limited to, all the requirements of this part; or
- (6) If a State executive official, or a State plant protection official authorized to do so, objects to the movement in writing and provides specific, detailed information that there is a risk the movement will result in the dissemination of a plant pest or noxious weed into the State, and APHIS determines that such plant pest risk cannot be adequately addressed or mitigated.

§319.7-4 Withdrawal, cancellation, and revocation of permits.

- (a) *Withdrawal of an application.* If the applicant wishes to withdraw a permit application before issuance of a permit, he or she must provide the request in writing to APHIS. APHIS will provide written notification to the applicant as promptly as circumstances allow regarding reception of the request and withdrawal of the application.
- (b) *Cancellation of permit by permittee.* If a permittee wishes to cancel a permit after its issuance, he or she must provide the request in writing to APHIS. APHIS will provide written notification to the applicant as promptly as circumstances allow regarding reception of the request and cancellation of the permit.
- (c) *Revocation of permit by APHIS.* APHIS may revoke any outstanding permit to import regulated articles into the United States. A revocation, including the reason for the revocation, will be provided in

writing, including by electronic methods, to the permittee as promptly as circumstances permit. The revocation of a permit may be appealed in accordance with §319.7-5.

(d) APHIS may revoke a permit to import a regulated article if:

(1) Information is received subsequent to the issuance of the permit of circumstances that APHIS determines would constitute cause for the denial of an application under §319.7-3; or

(2) APHIS determines that the permittee has failed to maintain the safeguards or otherwise observe the conditions specified in the permit or in any applicable regulations or administrative instructions, including, but not limited to, all of the requirements of this part.

(e) Upon revocation of a permit, the permittee must, without cost to the Federal Government and in the manner and method APHIS considers appropriate, either:

(1) Surrender all regulated articles covered by the revoked permit and any other affected plant material to an inspector;

(2) Destroy, under the supervision of an inspector, all regulated articles covered by the revoked permit and any other affected plant material; or

(3) Remove all regulated articles covered by the revoked permit and any other affected plant material from the United States.

[78 FR 19807, Apr. 10, 2014, as amended at 81 FR 5888, Feb. 4, 2016]

§319.7-5 Appeal of denial or revocation.

(a) All denials of an application for a permit, or revocations of an existing permit, will be provided in writing, including by electronic methods, as promptly as circumstances permit and will include the reasons for the denial or revocation.

(b) Any person whose application for a permit has been denied or whose permit has been revoked may appeal the decision in writing to APHIS within 10 business days from the date the communication of notification of the denial or revocation of the permit was received. The appeal must state all facts and reasons upon which the person is relying to show that the denial or revocation was incorrect.

(c) APHIS will grant or deny the appeal in writing and will state in writing the reason for the decision. The denial or revocation will remain in effect during the resolution of the appeal.