

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 319, 352, 360, and 361

[Docket No. APHIS–2007–0146]

RIN 0579–AC97

#### Update of Noxious Weed Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to make several changes to the regulations governing the importation and interstate movement of noxious weeds. We would add definitions of terms used in the regulations, add details regarding the process of applying for the permits used to import or move noxious weeds, add a requirement for the treatment of niger seed, and add provisions for petitioning to add a taxon to or remove a taxon from the noxious weed lists. These changes would update the regulations to reflect current statutory authority and program operations and improve the effectiveness of the regulations. We are also proposing to add seven taxa to the list of terrestrial noxious weeds and to the list of seeds with no tolerances applicable to their introduction. This action would prevent the introduction or dissemination of these noxious weeds into or within the United States.

**DATES:** We will consider all comments that we receive on or before August 10, 2009.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0146> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0146, Regulatory Analysis and Development,

PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0146.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Alan V. Tasker, Noxious Weeds Program Coordinator, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737–1236; (301) 734–5225; or Dr. Arnold Tschanz, Senior Plant Pathologist, Risk Management and Plants for Planting Policy, RPM, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Plant Protection Act (PPA, as amended, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States or the dissemination of a plant pest or noxious weed within the United States.

The PPA defines “noxious weed” as “any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.” The PPA also provides that the Secretary may publish, by regulation, a list of noxious weeds that are prohibited or

restricted from entering the United States or that are subject to restrictions on interstate movement within the United States. Under this authority, the Animal and Plant Health Inspection Service (APHIS) administers the noxious weeds regulations in 7 CFR part 360 (referred to below as the regulations), which prohibit or restrict the importation and interstate movement of those plants that are designated as noxious weeds in § 360.200.

Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, “Foreign Commerce,” requires shipments of imported agricultural and vegetable seeds 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. APHIS’ regulations implementing the provisions of title III of the FSA are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weed seeds with no tolerances applicable to their introduction into the United States.

We are proposing to make several changes to the regulations. Briefly, we would:

- Add definitions for terms used in the regulations and replace references to the Federal Noxious Weed Act with references to the PPA;
- Add explanatory text to clarify the listing of noxious weeds in § 360.200;
- Provide additional detail about the requirements for permits to move noxious weeds in § 360.300;
- Amend the regulations to require heat treatment for *Guizotia abyssinica* (niger) seed, as currently required in § 319.37–6;
- Add a section to provide information about the process for petitioning to add or remove a taxon from the noxious weed list;
- Add seven new noxious weeds to the list of noxious weeds in § 360.200 and the list of noxious weed seeds in § 361.6; and
- Update or correct the taxonomic designations for several currently listed noxious weeds. These proposed changes

are discussed in further detail directly below.

#### Definitions

Section 360.100 defines terms used in the noxious weed regulations. We are proposing to add definitions for several terms in § 360.100.

Some of the terms and definitions we are proposing to add to the regulations are derived from the definitions of these terms in the PPA. We are proposing to add these definitions in order to ensure that the regulations are consistent with the PPA. Those definitions are listed below:

- *Interstate*. From one State into or through any other State; or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.
- *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.

- *Noxious weed*. Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

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

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

- *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.

- *United States*. All of the States.

The definition of *permit* in the PPA includes oral authorization as well as written authorization; we are proposing to omit oral authorization because the current regulations in § 360.300 refer specifically to written permits and because the practice of issuing oral authorizations in other contexts has

created both verification and enforcement problems in the past.

Other definitions we are proposing to add to the noxious weed regulations are based on definitions in other parts of our regulations in 7 CFR chapter III. These definitions are listed below:

- *Administrator*. The Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.

- *APHIS*. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

- *Responsible person*. The person who has control over and will maintain control over the movement of the noxious weed and assure that all conditions contained in the permit and requirements in 7 CFR part 360 are complied with. A responsible person must be at least 18 years of age and must be a legal resident of the United States or designate an agent who is at least 18 years of age and a legal resident of the United States. (This definition is based on a similar definition of the same term in 7 CFR part 340.)

- *Through the United States*. From and to places outside the United States.

We would remove the definition of *Deputy Administrator* and replace all references to the Deputy Administrator in 7 CFR part 360 with references to the Administrator.

We are proposing to add one definition based on the International Plant Protection Convention's (IPPC) Glossary of Phytosanitary Terms.<sup>1</sup> We would define the term *taxon (taxa)* as: "Any grouping within botanical nomenclature, such as family, genus, species, or cultivar."

Finally, paragraph (b) of § 360.100 includes a reference to the Federal Noxious Weed Act (7 U.S.C. 2802), indicating that the terms included in that act apply with equal force and effect in the regulations in part 360. Because the Federal Noxious Weed Act has been superseded by the PPA, it is not necessary to include this language in the definitions in § 360.100. Accordingly, we would remove paragraph (b) and redesignate paragraph (a) as the introductory text of the section.

Adding these definitions to the regulations would improve their clarity and make them consistent with the PPA.

<sup>1</sup> International Standard for Phytosanitary Measures (ISPM) Number 5. To view this and other ISPMs on the Internet, go to <http://www.ippc.int/IPP/En/default.jsp> and click on the "Adopted ISPMs" link under the "Standards (ISPMs)" heading.

#### Explanatory Text in § 360.200

Section 360.200 designates certain plants and plant products as noxious weeds. The introductory text of this section currently reads as follows:

As authorized under section 412 of the Plant Protection Act (7 U.S.C. 7712), the Secretary of Agriculture has determined that the following plants or plant products fall within the definition of "noxious weed" as defined in section 403 of the Act (7 U.S.C. 7702(10)). Accordingly, the dissemination in the United States of the following plants or plant products may reasonably be expected to have the effects specified in section 403 of the Act:

We are proposing to amend this text for several reasons. As discussed earlier, we are proposing to add a definition of *noxious weed* to the regulations, which would mean it would not be necessary to cite the definition of that term in the PPA at the beginning of § 360.200. Also, because the Secretary has delegated to APHIS the authority to carry out title IV of the PPA, the Administrator is the person who makes the determination that a plant or plant product is a noxious weed. Finally, the PPA grants the Administrator the authority to take action to prevent the introduction of a noxious weed into the United States as well as to prevent the dissemination of a noxious weed within the United States.

The revised introductory text would thus read as follows:

The Administrator has determined that it is necessary to designate the following plants as noxious weeds to prevent their introduction into the United States or their dissemination within the United States.

In addition, a footnote to the current introductory text currently reads as follows:

One or more of the common names of weeds are given in parentheses after most scientific names to help identify the weeds represented by such scientific names; however, a scientific name is intended to include all weeds within the genus or species represented by the scientific name, regardless of whether the common name or names are as comprehensive in scope as the scientific name.

However, noxious weeds may be designated below the species level. In addition, the proposed definition of the term *taxon (taxa)* would allow us to convey this information more succinctly. We propose to revise this footnote to read as follows:

One or more of the common names of weeds are given in parentheses after most scientific names to help identify the weeds represented by such scientific names; however, a scientific name is intended to include all subordinate taxa within the taxon. For example, taxa listed at the genus level

include all species, subspecies, varieties, and forms within the genus; taxa listed at the species level include all subspecies, varieties, and forms within the species.

These changes would help to clarify the listing of noxious weeds in § 360.200.

#### *Additional Information in Permit Regulations*

The regulations in § 360.300 set out general prohibitions and restrictions on the movement of noxious weeds and requirements for permits for such movement. Under paragraph (a) of § 360.300, no person may move a Federal noxious weed into or through the United States, or interstate, unless he or she obtains a permit for such movement in accordance with paragraphs (b) through (e) of § 360.300 and the movement is consistent with the specific conditions contained in the permit.

We are proposing to add to the regulations new §§ 360.301 through 360.305. These sections would contain the following: Specific requirements for applying for permits; information about consultations that the Administrator may perform in deciding whether to grant a permit; the actions the Administrator may take on a permit and the conditions in the permit; denial or cancellation of permits; and disposal of noxious weeds when permits are canceled. The proposed provisions are modeled on similar provisions in 7 CFR part 330, the regulations governing the importation and interstate movement of plant pests.

Paragraphs (b) through (e) of current § 360.300 provide fewer details about the same topics that our proposed new sections would cover; accordingly, we are proposing to remove those paragraphs. We would add a new paragraph (b) stating that persons who move noxious weeds into or through the United States, or interstate, without complying with paragraph (a) of § 360.300 would be subject to such criminal and civil penalties as are provided by the PPA.

The current regulations do not contain detailed requirements regarding the process of applying for permits. We would add such detailed requirements in a new § 360.301. We would also amend paragraph (a) of § 360.300 to refer to applying for a permit in accordance with proposed § 360.301.

Proposed paragraph (a) in § 360.301 would set out details regarding the process of applying for permits to import a noxious weed into the United States. Under this paragraph, a responsible person would be required to apply for a permit to import a noxious

weed into the United States. We would include a footnote directing the reader to a Web site with application information. The application would have to include the following information:

- The responsible person's name, address, telephone number, and (if available) e-mail address;
- The taxon of the noxious weed;
- Plant parts to be moved;
- Quantity of noxious weeds to be moved per shipment;
- Proposed number of shipments per year;
- Origin of the noxious weeds;
- Destination of the noxious weeds;
- Whether the noxious weed is established in the State of destination;
- Proposed method of shipment;
- Proposed port of first arrival in the United States;
- Approximate date of arrival;
- Intended use of the noxious weeds;
- Measures to be employed to prevent danger of noxious weed dissemination; and
- Proposed method of final disposition of the noxious weeds.

Proposed paragraph (b) in § 360.301 would set out details regarding the process of applying for permits to move a noxious weed interstate. Under this paragraph, a responsible person would be required to apply for a permit to move a noxious weed interstate. We would also provide a footnote with application information in this paragraph. The application would have to include the following information:

- The responsible person's name, address, telephone number, and (if available) e-mail address;
- The taxon of the noxious weed;
- Plant parts to be moved;
- Quantity of noxious weeds to be moved per shipment;
- Proposed number of shipments per year;
- Origin of the noxious weeds;
- Destination of the noxious weeds;
- Whether the noxious weed is established in the State of destination;
- Proposed method of shipment;
- Approximate date of movement;
- Intended use of the noxious weeds;
- Measures to be employed to prevent danger of noxious weed dissemination; and
- Proposed method of final disposition of the noxious weeds.

The regulations do not currently indicate what information must be provided when applying for a permit, meaning that the information we receive sometimes does not allow us to fully evaluate the application. Requiring that responsible persons applying for a permit to import noxious weeds or

move them interstate provide this information will allow APHIS to evaluate the permit applications more quickly and thoroughly and to followup in case any part of a permit application is unclear.

Proposed paragraph (c) would provide that permits to move noxious weeds through the United States would be obtained in accordance with the plant quarantine safeguard regulations in 7 CFR part 352. The regulations in 7 CFR part 352 provide a general framework for regulating the movement of plants, plant products, and other articles through the United States to prevent the dissemination of plant pests. We have determined that 7 CFR part 352 provides an appropriate framework for regulating the movement of noxious weeds through the United States as well.

To accommodate this change, we would make the following changes to the regulations in 7 CFR part 352: Refer to noxious weeds in addition to other plant products; refer to the noxious weeds regulations in 7 CFR part 360 as well as the foreign quarantine notices in 7 CFR part 319 and the plant pest movement regulations in 7 CFR part 330; and refer to preventing the dissemination of noxious weeds as well as plant pests. These changes can be found in the regulatory text at the end of this document.<sup>2</sup>

We are proposing to add a new section on approving permit applications. Currently, paragraph (b) of § 360.300 provides that the Deputy Administrator will issue a written permit for the movement of a noxious weed into or through the United States, or interstate, if application is made for such movement and if the Deputy Administrator determines that such movement, under conditions specified in the permit, would not involve a danger of dissemination of the noxious weed in the United States, or interstate.

We would discuss in more detail the factors that we will consider in determining whether to approve an application for a permit to move noxious weeds in proposed § 360.302. Proposed § 360.302, "Consideration of applications for permits to move noxious weeds," would state that, upon the receipt of an application made in accordance with § 360.301 for a permit for movement of a noxious weed into the United States or interstate, the Administrator will consider the application on its merits.

<sup>2</sup> Paragraph (d) of § 352.5 contains two references to "parts 319." These references are intended to include both 7 CFR part 319 and 7 CFR part 330. We would correct the error and add a reference to 7 CFR part 360 as well.

Paragraph (a) of proposed § 360.302 would provide that the Administrator may consult with other Federal agencies or entities, States or political subdivisions of States, national governments, local governments in other nations, domestic or international organizations, domestic or international associations, and other persons for views on the danger of noxious weed dissemination into the United States, or interstate, in connection with the proposed movement. The list of entities with which the Administrator may consult is taken from section 431(a) of the PPA.

Paragraph (b) of proposed § 360.302 would provide that the Administrator may inspect the site where noxious weeds are proposed to be handled in connection with or after their movement under permit to determine whether existing or proposed facilities will be adequate to prevent noxious weed dissemination if a permit is issued.

Currently, paragraph (c) of § 360.300 states that any permits issued under that section will contain in written form any conditions (other than the conditions in 7 CFR part 360) under which the permit is to be granted, e.g., conditions with respect to shipment, storage, and destruction. Proposed § 360.303, "Approval of an application for a permit to move a noxious weed; conditions specified in permit," would provide more detail on this process. It would state that the Administrator will approve or deny an application for a permit to move a noxious weed. If the application is approved, the Administrator would issue the permit including any conditions that the Administrator had determined would be necessary to prevent dissemination of noxious weeds into the United States or interstate. Such conditions could include requirements for inspection of the premises where the noxious weed is to be handled after its movement under the permit, to determine whether the facilities there are adequate to prevent noxious weed dissemination and whether the conditions of the permit are otherwise being observed. Before the permit is issued, the Administrator would require the responsible person to agree in writing to the conditions under which the noxious weed will be safeguarded.

Currently, paragraph (d) of § 360.300 states that, if a permit application is denied, the applicant shall be furnished the reasons for the denial. Paragraph (e) of § 360.300 states that the Deputy Administrator may revoke any outstanding permit issued under § 360.300, and may deny future permit applications, if the Deputy

Administrator determines that the issuee has failed to comply with any provision of the Act or this section, including conditions of any permit issued. Paragraph (e) also provides that, upon request, any permit holder will be afforded an opportunity for a hearing with respect to the merits or validity of any such revocation involving his or her permit.

Proposed § 360.304, "Denial of an application for a permit to move a noxious weed; cancellation of a permit to move a noxious weed," would provide more specific information on potential reasons for denying a permit and reasons for canceling a permit. It would also provide more details about the hearing process that is available to permittees when a permit is canceled.

Under paragraph (a) of proposed § 360.304, the Administrator could deny an application for a permit to move a noxious weed when the Administrator has determined that:

- No safeguards adequate or appropriate to prevent dissemination of the noxious weed can be implemented; or
- The destructive potential of the noxious weed, should it escape despite proposed safeguards, outweighs the probable benefits to be derived from the proposed movement and use of the noxious weed; or
- The responsible person, or the responsible person's agent, as a previous permittee, failed to maintain the safeguards or otherwise observe the conditions prescribed in a previous permit and failed to demonstrate the ability or intent to observe them in the future; or
- The movement could impede an APHIS eradication, suppression, control, or regulatory program; or
- A State plant regulatory official objects to the issuance of the permit on the grounds that granting the permit will pose a risk of dissemination of the noxious weed into the State.

It is important to note that, under the proposed regulations, the Administrator would have the option to approve a permit for movement of a noxious weed even if one of these conditions was true. For example, if a State plant regulatory official objected to the issuance of a permit, the Administrator could still approve the permit if the Administrator determined that the safeguards specified in the permit were adequate to address the risk of dissemination.

Under paragraph (b) of proposed § 360.304, the Administrator could cancel any outstanding permit when:

- After the issuance of the permit, information is received that constitutes cause for the denial of an application for

permit under proposed paragraph § 360.304(a); or

- The responsible person has not maintained the safeguards or otherwise observed the conditions specified in the permit.

Paragraph (c) of proposed § 360.304 would provide that, if a permit is orally canceled, APHIS would provide the reasons for the withdrawal of the permit in writing within 10 days. Any person whose permit has been canceled or any person who has been denied a permit would be allowed to appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the cancellation or denial. The appeal would have to state all of the facts and reasons upon which the person relies to show that the permit was wrongfully canceled or denied. The Administrator would 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 would be held to resolve the conflict. Rules of practice concerning such a hearing would be adopted by the Administrator.

Currently, the regulations in § 360.300 do not address the disposal of noxious weeds when a permit is canceled. Proposed § 360.305 would provide that, when a permit for the movement of a noxious weed is canceled by the Administrator and not reinstated under proposed § 360.304(c), further movement of the noxious weed covered by the permit into or through the United States, or interstate, would be prohibited unless authorized by another permit. The responsible person would have to arrange for disposal of the noxious weed in question in a manner that the Administrator determines is adequate to prevent noxious weed dissemination. The Administrator would be able to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as the Administrator deems appropriate, any noxious weed that is moved without compliance with any conditions in the permit or after the permit has been canceled, whenever the Administrator deems it necessary in order to prevent the dissemination of any noxious weed into or within the United States. This is consistent with APHIS' authority under the PPA.

These new sections would provide applicants for permits to move noxious weeds and current permit holders with more detailed information on the processes for applying for, approving or denying, and canceling a permit.

### New Section With Treatment for Niger Seed

The nursery stock regulations in § 319.37–6 require *Guizotia abyssinica* (niger) seeds to be heat treated in accordance with 7 CFR part 305, either before importation or at the time of arrival at the port of first arrival in the United States, for the presence of various noxious weed seeds including *Cuscuta* spp. If the seeds are treated before importation, paragraph (c) of § 319.37–6 requires the seeds to be treated at a facility that is approved by APHIS in accordance with 7 CFR part 305 and that operates in compliance with a written agreement between the treatment facility owner and the plant protection service of the exporting country, in which the treatment facility owner agrees to comply with the provisions of § 319.37–6 and allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. The treatments must be certified in accordance with the conditions described in § 319.37–13(c).

Most niger seed is imported not for use as nursery stock, however, but for use as birdseed. To ensure that the regulations in 7 CFR chapter III clearly require niger seed to be treated regardless of its intended use, we are proposing to add a new section § 360.400 to the noxious weed regulations that would require imported niger seed to be treated under the same conditions that are currently specified in § 319.37–6.

We are also proposing to correct an editorial error in § 319.37–6(c), to clarify the conditions under which niger seed may be treated prior to importation into the United States.

### Petitions To Add a Taxon to or Remove a Taxon From the Noxious Weed Lists

APHIS accepts petitions to add a taxon to or remove a taxon from the noxious weed lists in § 360.200. Although we provide some information about the petition process on APHIS' noxious weeds Web site, the regulations do not contain any information about this process. We are proposing to add new §§ 360.500 and 360.501 to provide such information.

Proposed § 360.500 would describe the process for petitioning to add a taxon to the noxious weed list. This section would state that a person may petition the Administrator to have a taxon added to the noxious weeds lists in § 360.200. The section would also state that details of the petitioning process for adding a taxon to the lists

are available on the Internet at [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/weeds/downloads/listingguide.pdf](http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/listingguide.pdf). Persons who submit a petition to add a taxon to the noxious weed lists would be required to provide their name and contact information, in case we need to followup with them to clarify details of a petition. Persons who submit a petition would also be encouraged to provide several pieces of information, which can help speed up the review process and help APHIS determine whether the specified plant taxon should be listed as a noxious weed. However, providing such information would not be required.

Petitioners would be encouraged to provide the following information for identification of the noxious weed:

- The taxon's scientific name and author;
- Common synonyms;
- Botanical classification;
- Common names;
- Summary of life history;
- Native and world distribution;
- Distribution in the United States, if any (specific States, localities, or Global Positioning System coordinates);
- Description of control efforts, if established in the United States; and
- Whether the taxon is regulated at the State or local level.

Petitioners would be encouraged to provide the following information about the potential consequences of the taxon's introduction or spread:

- The taxon's habitat suitability in the United States (predicted ecological range);
- Dispersal potential (biological characteristics associated with invasiveness);
- Potential economic impacts (e.g., potential to reduce crop yields, lower commodity values, or cause loss of markets for U.S. goods); and
- Potential environmental impacts (e.g., impacts on ecosystem processes, natural community composition or structure, human health, recreation patterns, property values, or use of chemicals to control the taxon).

Petitioners would also be encouraged to provide the following information about the likelihood of the taxon's introduction or spread:

- Potential pathways for the taxon's movement into and within the United States; and
- The likelihood of survival and spread of the taxon within each pathway.

Finally, petitioners would be encouraged to provide a list of references for the information discussed above.

Similarly, proposed § 360.501 would describe the process for petitioning to

remove a taxon from the noxious weed list. This section would state that a person may petition the Administrator to remove a taxon from the noxious weeds lists in § 360.200. The section would also state that details of the petitioning process for removing a taxon from the lists are available at [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/weeds/downloads/delistingguide.pdf](http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/delistingguide.pdf). Persons who submit a petition to remove a taxon from the noxious weed lists would be required to provide their name and contact information, in case we need to followup with them to clarify details of a petition. Persons who submit a petition would also be encouraged to provide the following information, which can help speed up the review process and help APHIS determine whether the specified plant taxon should not be listed as a noxious weed. However, providing such information would not be required.

- Evidence that the species is distributed throughout its potential range or has spread too far to implement effective control;
- Evidence that control efforts have been unsuccessful and further efforts are unlikely to succeed; and
- For cultivars of a listed noxious weed, scientific evidence that the cultivar has a combination of risk elements that result in a low pest risk. For example, the cultivar may have a narrow habitat suitability, low dispersal potential, evidence of sterility, inability to cross-pollinate with introduced wild types, or few if any potential negative impacts on the economy or environment of the United States.

Petitioners would also be encouraged to provide a list of references for this information.

### Additions to the Lists of Terrestrial Noxious Weeds and Noxious Weed Seeds

Paragraph (c) of § 360.200 lists terrestrial noxious weeds. Such weeds may not be imported into and through the United States, or moved interstate except with a permit obtained in accordance with § 360.300. In addition, as mentioned earlier in this document, paragraph (a)(1) of § 361.6 lists species of noxious weed seeds with no tolerances applicable to their introduction into the United States.

We are proposing to add seven new taxa to the list of terrestrial noxious weeds in § 360.200(c) and to the list of noxious weed seeds with no tolerances applicable to their introduction in § 361.6(a)(1). These taxa are:

- *Acacia nilotica* (Linnaeus) Wildenow ex Delile (prickly acacia), a

perennial non-climbing shrub or tree. *A. nilotica* is a serious weed in South Africa and Australia, where it aggressively replaces grasslands with thorny thickets. Seedlings and young trees of *A. nilotica* are protected from grazing by thorns, and the plants have long-distance dispersal mechanisms allowing uncontrolled spread, large seed production, and long-lived seeds. Young *A. nilotica* plants grow rapidly, and the plants are tolerant of drought, fire, and salinity. Potential pathways for the introduction of *A. nilotica* into the United States include ornamental seed shipments, sale of seeds for medicinal purposes, and intentional importation in passenger baggage. *A. nilotica* occurs in Puerto Rico and the Virgin Islands, and may also be in Hawaii. It is possibly cultivated in other States, as it is offered for sale by at least three U.S. nurseries. We invite public comment on the distribution of *A. nilotica* in the United States.

- *Ageratina riparia* (Regel) R.M. King and H. Robinson (mistflower), a perennial erect or sprawling herb to subshrub. Colonies of *A. riparia* increase in density and size by spreading horizontally and rooting at the nodes. The plant thrives in misty, upland pastures and mountainous areas with high rainfall, and its leaf litter is allelopathic, inhibiting the growth of other species. *A. riparia* is a serious weed in Africa, India, Indonesia, Papua New Guinea, Southeast Asia, Australia, New Zealand, Jamaica, Hawaii, and Madagascar. In Hawaii Volcanoes National Park, the weed competes with native plants and occupies disturbed areas. *A. riparia* has been introduced as a contaminant in ornamental and agricultural material and is both an agricultural and environmental weed.

- *Arctotheca calendula* (Linnaeus) Levyns (capeweed), a flat, stemless or short-stemmed, spreading, rosette-forming annual (or perennial in areas with frost-free climate). *A. calendula* produces stolons, which root at the nodes and are often vigorous. It is capable of infesting turf and pasture, competing with many kinds of crops, causing allergies and dermatitis in sensitive people, and negatively affecting stock production, with likely impacts to both agriculture and the environment. *A. calendula* is currently present in California. A purple-flowered, seed-producing type of *A. calendula* is regulated by the State. A sterile, vegetatively reproducing yellow-flowered type is not currently regulated by the State of California, but is noted by some to escape from cultivation. In addition, identifying a plant as a member of one type or another of *A.*

*calendula* can be difficult. We invite public comment on whether it is appropriate to regulate the entire species *A. calendula* or whether we should only regulate the purple-flowered, seed-producing type.

- *Euphorbia terracina* Linnaeus (false caper), a glabrous erect leafy perennial. An aggressive plant, it forms dense stands that inhibit the growth of native plants, competing with crops and pasture plants. In Western Australia, *E. terracina* is a serious weed of grazing land. *E. terracina* is avoided by livestock and can be toxic to animals.

- *Inula britannica* Linnaeus (British elecampane), an erect biennial. *I. britannica* has been found in Michigan and Minnesota, where it is regulated by those States, and in the Netherlands. It was initially detected in Michigan in nurseries with hosta imported from the Netherlands. *I. britannica* has negative impacts on surrounding hosta, which must be sacrificed if chemical control efforts are undertaken.

- *Onopordum acaulon* Linnaeus (stemless thistle), a prostrate annual or biennial herb. The plant is found in roadsides, wastelands, cultivated land, and pastures. *O. acaulon* reduces carrying capacity of pasture, and livestock eating the plant suffer impaction and liver damage. The seeds of *O. acaulon* are long-lived in soil.

- *Onopordum illyricum* Linnaeus (Illyrian thistle), a tall, erect annual or biennial herb. In California, where *O. illyricum* is currently found and regulated, the plant is found in natural areas, disturbed sites, roadsides, fields, and especially in sites with fertile soils. *O. illyricum* is difficult to control and has the potential to infest pastures, reduce carrying capacity, and create physical barriers to stock and wildlife.

To evaluate the possibility that these taxa could be noxious weeds, we have prepared a weed risk assessment (WRA) for each taxon. Copies of the WRAs may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for a link to Regulations.gov).

The WRAs conclude that the taxa listed above qualify as Federal noxious weeds. They also conclude that the introduction or further spread of those taxa could directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment. Therefore, pursuant to APHIS' authority under the PPA, we have determined that

it is necessary to place restrictions on their importation and interstate movement, and we are proposing to list those seven taxa as terrestrial noxious weeds in § 360.200(c) and as noxious weed seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

*Updates and Corrections in Current Entries for Noxious Weeds in §§ 360.200 and 361.6(a)(1)*

We are proposing to make several updates, corrections, and clarifications in the lists of noxious weeds in § 360.200 and the list of noxious weed seeds with no tolerances applicable to their introduction in § 361.6(a)(1). For some of the taxa listed in these paragraphs, the accepted names have changed. In addition, these lists contain a few spelling errors and incorrect or incomplete author designations. We are proposing to update and correct the entries for these taxa. These proposed changes are set forth in the regulatory text at the end of this document.

In § 360.200, we are proposing to change the designation of *Caulerpa taxifolia* to add the author's name and a common name and to clarify that only the Mediterranean strain is regulated as a noxious weed. The new entry would thus read: "*Caulerpa taxifolia* (Vahl) C. Agardh, Mediterranean strain (killer algae)." We would remove the entry for *C. taxifolia* from the list of noxious weed seeds with no tolerances applicable to their introduction in § 361.6(a)(1), since a marine alga would not be found in seed shipments.

The list of parasitic noxious weeds in § 360.200(b) contains an entry for *Cuscuta* spp. but lists exceptions for species within that genus that are native to or widespread in the United States. Three of the species listed as exceptions under *Cuscuta* spp., *C. jepsonii*, *C. occidentalis*, and *C. nevadensis*, have been determined to be synonyms of three other species listed as exceptions—respectively, *C. indecora*, *C. californica*, and *C. veatchii*. (*C. veatchii* is currently listed in the regulations as *C. vetchii*; we would correct that error.) Accordingly, we would remove *C. jepsonii*, *C. occidentalis*, and *C. nevadensis* from the list of exceptions under *Cuscuta* spp. in § 360.200(b).

The names listed in the regulations for two species listed in § 360.200(c), the list of terrestrial noxious weeds, and § 361.6(a)(1) are not the currently accepted botanical names. Accordingly, we would replace the entry for *Digitaria scalarum* with an entry for *D. abyssinica* in § 360.200(c) and replace the entry for *Digitaria abyssinica* (= *D. scalarum*) in

§ 361.6(a)(1) with an entry that simply refers to *D. abyssinica*. In both §§ 360.200(c) and 361.6(a)(1), we would replace the entry for *Mimosa invisa* with an entry for *M. diplotricha*.

Both §§ 360.200(c) and 361.6(a)(1) contain entries for *Homeria* spp. However, this genus, and several other genera from the family Iridaceae, have been reclassified and transferred to the large genus *Moraea*. The PRA that we prepared to help evaluate whether we should add *Homeria* spp. to the noxious weed list considered specific species within the genus *Homeria*. These species are now classified as *Moraea collina*, *M. flaccida*, *M. miniata*, *M. ochroleuca*, and *M. pallida*. Accordingly, we would update the regulations by removing the entry for *Homeria* spp. from both §§ 360.200(c) and 361.6(a)(1) and adding entries for *M. collina*, *M. flaccida*, *M. miniata*, *M. ochroleuca*, and *M. pallida* in its place.

#### Executive Order 12866 and Regulatory Flexibility Act

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

This proposal would make several changes to the regulations governing the importation and interstate movement of noxious weeds. It would add definitions of terms used in the regulations, add details regarding the process of applying for the permits used to import or move noxious weeds, add a requirement for the treatment of niger seed, and add provisions for petitioning to add a taxon to or remove a taxon from the noxious weed lists. These changes would update the regulations to reflect current statutory authority and program operations and improve the effectiveness of the regulations. The proposal would also add seven taxa to the list of terrestrial noxious weeds and to the list of seeds with no tolerances applicable to their introduction. This action would prevent the introduction or dissemination of these noxious weeds into or within the United States.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this analysis considers the impact on small businesses, small organizations, and small governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the expected impact of proposed rules on small entities. Sections 603(b) and 603(c) of the Act specify the content of an IRFA.

The IRFA requirements are addressed in the following sections.

#### Reasons Action Is Being Considered

To add clarity and provide transparency, it has become necessary to update and expand the regulations in 7 CFR parts 360 and 361. Seven additional weeds that have been identified as noxious weeds need to be added to the noxious weeds list. The addition of these seven additional taxa to the noxious weeds list would help prevent their introduction into the United States or their spread into noninfested areas of the United States. In addition, the list of noxious weeds in the regulations needs to be updated. Updating the regulations would help ensure that the regulated community can easily determine what taxa may only be imported or moved interstate under a permit.

#### Objectives and Legal Basis for the Proposed Rule

The main objective of the proposed rule is to update the regulations that govern the movement of noxious weeds (7 CFR parts 360 and 361). This action is authorized by the PPA, which authorizes the Secretary of Agriculture to implement programs and policies designed to prevent the introduction and spread of plant pests and noxious weeds. Specifically, the Act authorizes the Secretary to regulate the importation and interstate movement of noxious weeds, which can damage crops, livestock, and other agricultural interests, as well as impede navigation and cause harm to irrigation systems, public health, and the environment.

#### Description and the Number of Small Entities Regulated

For the purpose of this analysis and following the Small Business Administration (SBA) guidelines, we note that a major segment of entities potentially affected by the proposed rule are classified within the following industries: Nursery and Tree Production (North American Industry Classification System [NAICS] code 111421), and Floriculture Production (NAICS 111422).<sup>3</sup> For these two industry categories, entities are considered small by SBA standards if annual sales are \$750,000 or less. According to the Census of Agriculture, these two categories included 64,366 farms in

<sup>3</sup> As observed in the preceding paragraph, other agricultural and nonagricultural industries and resources can be negatively affected by the introduction of noxious weeds. The nursery and floriculture industries are representative of these other industries in terms of being comprised largely of small entities.

2002, and represented 3 percent of all farms in the United States. Over 92 percent of the farms had annual sales of less than \$500,000 and by SBA standards are thus considered small.

As there have been no previous restrictions on their importation other than the general restrictions on the importation of nursery stock in §§ 319.37 through 319.37-14, the seven new species that would be added to the noxious weed list may currently be imported into the United States as ornamental crops under certain conditions. However, based on the WRAs, these species are not known to be economically significant in the United States. Adding these noxious weeds to the regulations is not expected to have an economic effect on small entities in terms of restricting existing markets. However, APHIS welcomes public comment on the likely effects of the rule.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of 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 submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2007-0146. Please send a copy of your comments to: (1) Docket No. APHIS-2007-0146, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, Room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to

OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to make several changes to update the regulations governing the importation and interstate movement of noxious weeds. We would add definitions of terms used in the regulations, add requirements for the permits used to import or move noxious weeds, add a requirement for the treatment of niger seed, and add provisions for petitioning to add a taxon to or remove a taxon from the noxious weed lists. These actions will necessitate information collection for permits and for petitions to add a taxon to or remove a taxon from the noxious weed lists.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 16 hours per response.

*Respondents:* Researchers.

*Estimated annual number of respondents:* 2.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 2.

*Estimated total annual burden on respondents:* 32 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

## E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

## List of Subjects

### 7 CFR Part 319

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

### 7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

### 7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

### 7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, we are proposing to amend 7 CFR parts 319, 352, 360, and 361 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.

### § 319.37-6 [Amended]

2. In § 319.37-6, paragraph (c) is amended by adding the words "must be treated" after the word "States".

## PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

3. The authority citation for part 352 continues to read as follows:

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

### § 352.2 [Amended]

4. Section 352.2 is amended as follows:

a. In paragraph (a), in the first sentence, by adding the words "noxious weeds," after the words "plant pests,"; and by removing the words "319 and 330" and adding the words "319, 330, and 360" in their place.

b. In paragraph (b), by removing the words "319 or 330" and adding the words "319, 330, or 360" in their place.

### § 352.3 [Amended]

5. Section 352.3 is amended as follows:

a. In paragraphs (a) and (b), by adding the words "noxious weeds," after the words "plant pests," each time they occur.

b. In paragraph (d), by adding the words "or noxious weed" before the word "dissemination."

### § 352.5 [Amended]

6. Section 352.5 is amended as follows:

a. By adding the words "noxious weeds," after the words "plant pests," each time they occur.

b. In paragraph (d), by adding the words "330, and 360" after the words "parts 319" each time they occur.

### § 352.6 [Amended]

7. Section 352.6 is amended as follows:

a. In paragraph (a), by adding the words "(including noxious weeds)" before the period at the end of the paragraph heading.

b. In paragraph (e), by adding the words "or noxious weed" before the word "dissemination" each time it occurs.

### § 352.7 [Amended]

8. Section 352.7 is amended by adding the words "(including noxious weeds)" after the word "products" the first time it occurs.

### § 352.9 [Amended]

9. Section 352.9 is amended by adding the words "noxious weeds," after the words "plant pests,".

### § 352.10 [Amended]

10. Section 352.10 is amended as follows:

a. In paragraphs (a) and (b)(1), by removing the words "part 319 or 330" each time they occur and adding the words "parts 319, 330, or 360" in their place.

b. In paragraphs (b)(1), (b)(2), and (c), by adding the words "or noxious weed" before the word "dissemination" each time it occurs.

c. In paragraph (b)(2), by removing the words “319 and 330” and adding the words “319, 330, or 360” in their place.

**§ 352.11 [Amended]**

11. In § 352.11, paragraph (a)(1) is amended by adding the words “noxious weeds,” after the words “plant pests,”.

**§ 352.13 [Amended]**

12. Section 352.13 is amended as follows:

- a. By adding the words “noxious weeds,” after the words “plant pests,”.
- b. By removing the words “319 or 330” and adding the words “319, 330, or 360” in their place.

**§ 352.15 [Amended]**

13. Section 352.15 is amended by adding the words “or noxious weed” before the word “dissemination”.

**PART 360—NOXIOUS WEED REGULATIONS**

14. The authority citation for part 360 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

15. Section 360.100 is amended as follows:

- a. By removing the introductory text of paragraph (b).
- b. By redesignating paragraph (a) as undesignated introductory text.
- c. By adding, in alphabetical order, new definitions of *Administrator*, *APHIS*, *interstate*, *move*, *noxious weed*, *permit*, *person*, *responsible person*, *State*, *taxon (taxa)*, *through the United States*, and *United States* to read as set forth below.
- d. By removing the definition of *Deputy Administrator*.

**§ 360.100 Definitions.**

\* \* \* \* \*

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.

*APHIS.* The Animal and Plant Health Inspection Service, United States Department of Agriculture.

\* \* \* \* \*

*Interstate.* From one State into or through any other State; or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

*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.

*Noxious weed.* Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

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

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

\* \* \* \* \*

*Responsible person.* The person who has control over and will maintain control over the movement of the noxious weed and assure that all conditions contained in the permit and requirements in this part are complied with. A responsible person must be at least 18 years of age and must be a legal resident of the United States or designate an agent who is at least 18 years of age and a legal resident of the United States.

*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.

*Taxon (taxa).* Any grouping within botanical nomenclature, such as family, genus, species, or cultivar.

*Through the United States.* From and to places outside the United States.

*United States.* All of the States.

16. Section 360.200 is amended as follows:

- a. By revising the introductory text, including footnote 1, to read as set forth below.
- b. In paragraph (a), by revising the entries for “*Caulerpa taxifolia* (Mediterranean clone),” “*Eichornia azurea* (Swarth) Kunth,” and “*Melaleuca quinquinervia* (Cav.) Blake” to read as set forth below.

c. In paragraph (b), by removing the entries for “*Cuscuta jepsonii* Yuncker,” “*Cuscuta nevadensis* I.M. Johnston,” and “*Cuscuta occidentalis* Millspaugh ex Mill & Nuttall;” and by revising the entries for “*Cuscuta ceanothii* Behr,” “*Cuscuta cephalanthii* Engelm;” “*Cuscuta corylii* Engelm;” “*Cuscuta*

*exalta* Engelm;” “*Cuscuta obtusiflora* Humboldt, Bonpland, & Kunth,” “*Cuscuta rostrata* Shuttleworth ex Engelm;” “*Cuscuta umbellata* Humboldt, Bonpland, & Kunth,” and “*Cuscuta vetchii* Brandegee” to read as set forth below.

d. In paragraph (c), by removing the entries for “*Digitaria scalarum* (Schweinfurth) Chiovenda (African couchgrass, fingergrass),” “*Homeria* spp.,” and “*Mimosa invisa* Martius (giant sensitive plant)”.

e. In paragraph (c), by revising the entries for “*Digitaria velutina* (Forsskal) Palisot de Beauvois (velvet fingergrass, annual conchgrass),” “*Drymaria arenariodes* Humboldt & Bonpland ex Roemer & Schultes (lightning weed),” “*Imperata cylindrica* (Linnaeus) Raeuschel (cogongrass),” “*Mikania micrantha* Humboldt, Bonpland, & Kunth,” “*Prosopis farcta* (Solander ex Russell) Macbride,” “*Prosopis pallida* (Humboldt & Bonpland ex Willdenow) Humboldt, Bonpland, & Kunth,” “*Setaria pallide-fusca* (Schumacher) Stapf & Hubbard (cattail grass),” and “*Spermacoce alata* (Aublet) de Candolle” to read as set forth below.

f. In paragraph (c), by adding, in alphabetical order, entries for “*Acacia nilotica* (Linnaeus) Willdenow ex Delile (prickly acacia),” “*Ageratina riparia* (Regel) R.M. King and H. Robinson (mistflower),” “*Arctotheca calendula* (Linnaeus) Levyns (capeweed),” “*Digitaria abyssinica* (Hochstetter ex A. Richard) Stapf (African couchgrass, fingergrass),” “*Euphorbia terracina* Linnaeus (false caper),” “*Inula britannica* Linnaeus (British elecampane),” “*Mimosa diplotricha* C. Wright (giant sensitive-plant),” “*Moraea collina* Thunberg (apricot tulip),” “*Moraea flaccida* (Sweet) Steudel (one-leaf Cape-tulip),” “*Moraea miniata* Andrews (two-leaf Cape-tulip),” “*Moraea ochroleuca* (Salisbury) Drapiez (red tulip),” “*Moraea pallida* (Baker) Goldblatt (yellow tulip),” “*Onopordum acaulon* Linnaeus (stemless thistle),” and “*Onopordum illyricum* Linnaeus (Illyrian thistle)”.

**§ 360.200 Designation of noxious weeds.**

The Administrator has determined that it is necessary to designate the following plants<sup>1</sup> as noxious weeds to prevent their introduction into the

<sup>1</sup> One or more of the common names of weeds are given in parentheses after most scientific names to help identify the weeds represented by such scientific names; however, a scientific name is intended to include all subordinate taxa within the taxon. For example, taxa listed at the genus level include all species, subspecies, varieties, and forms within the genus; taxa listed at the species level include all subspecies, varieties, and forms within the species.

United States or their dissemination within the United States:

(a) \* \* \*

*Caulerpa taxifolia* (Vahl) C. Agardh, Mediterranean strain (killer algae)

\* \* \* \* \*

*Eichhornia azurea* (Swartz) Kunth

\* \* \* \* \*

*Melaleuca quinquenervia* (Cavanilles) S.T. Blake

\* \* \* \* \*

(b) \* \* \*

*Cuscuta ceanothi* Behr

*Cuscuta cephalanthi* Engelm

\* \* \* \* \*

*Cuscuta coryli* Engelm

\* \* \* \* \*

*Cuscuta exaltata* Engelm

\* \* \* \* \*

*Cuscuta obtusiflora* Kunth

\* \* \* \* \*

*Cuscuta rostrata* Shuttleworth ex Engelm & Gray

\* \* \* \* \*

*Cuscuta umbellata* Kunth

\* \* \* \* \*

*Cuscuta veatchii* Brandege

\* \* \* \* \*

(c) \* \* \*

*Digitaria velutina* (Forsskal) Palisot de Beauvois (velvet fingergrass, annual couchgrass)

*Drymaria arenariodes* Humboldt & Bonpland ex J.A. Schultes (lightning weed)

\* \* \* \* \*

*Imperata cylindrica* (Linnaeus) Palisot de Beauvois (cogongrass)

\* \* \* \* \*

*Mikania micrantha* Kunth

\* \* \* \* \*

*Prosopis farcta* (Banks & Solander) J.F. Macbride

\* \* \* \* \*

*Prosopis pallida* (Humboldt & Bonpland ex Willdenow) Kunth

\* \* \* \* \*

*Setaria pumila* (Poir.) Roem. & Schult. subsp. *pallidifusca* (Schumach.) B.K. Simon (cattail grass)

\* \* \* \* \*

*Spermacoce alata* Aublet

\* \* \* \* \*

17. Section 360.300 is revised to read as follows:

**§ 360.300 Notice of restrictions on movement of noxious weeds.**

(a) No person may move a Federal noxious weed into or through the United States, or interstate, unless:

(1) He or she applies for a permit to move a noxious weed in accordance with § 360.301;

(2) The permit application is approved; and

(3) The movement is consistent with the specific conditions contained in the permit.

(b) Persons who move noxious weeds into or through the United States, or interstate, without complying with paragraph (a) of this section will be subject to such criminal and civil penalties as are provided by the Plant Protection Act (7 U.S.C. 7701 *et seq.*). (Approved by the Office of Management and Budget under control number 0579-0054)

18. New §§ 360.301 through 360.305, 360.400, 360.500, and 360.501 are added to read as follows:

**§ 360.301 Information required for applications for permits to move noxious weeds.**

(a) *Permit to import a noxious weed into the United States.* A responsible person must apply for a permit to import a noxious weed into the United States.<sup>2</sup> The application must include the following information:

(1) The responsible person's name, address, telephone number, and (if available) e-mail address;

(2) The taxon of the noxious weed;

(3) Plant parts to be moved;

(4) Quantity of noxious weeds to be moved per shipment;

(5) Proposed number of shipments per year;

(6) Origin of the noxious weeds;

(7) Destination of the noxious weeds;

(8) Whether the noxious weed is established in the State of destination;

(9) Proposed method of shipment;

(10) Proposed port of first arrival in the United States;

(11) Approximate date of arrival;

(12) Intended use of the noxious weeds;

(13) Measures to be employed to prevent danger of noxious weed dissemination; and

(14) Proposed method of final disposition of the noxious weeds.

(b) *Permit to move noxious weeds interstate.* A responsible person must apply for a permit to move a noxious weed interstate.<sup>3</sup> The application must include the following information:

(1) The responsible person's name, address, telephone number, and (if available) e-mail address;

(2) The taxon of the noxious weed;

(3) Plant parts to be moved;

(4) Quantity of noxious weeds to be moved per shipment;

(5) Proposed number of shipments per year;

(6) Origin of the noxious weeds;

(7) Destination of the noxious weeds;

(8) Whether the noxious weed is established in the State of destination;

(9) Proposed method of shipment;

(10) Approximate date of movement;

(11) Intended use of the noxious weeds;

(12) Measures to be employed to prevent danger of noxious weed dissemination; and

(13) Proposed method of final disposition of the noxious weeds.

(c) *Permits to move noxious weeds through the United States.* Permits to move noxious weeds through the United States must be obtained in accordance with part 352 of this chapter.

**§ 360.302 Consideration of applications for permits to move noxious weeds.**

Upon the receipt of an application made in accordance with § 360.301 for a permit for movement of a noxious weed into the United States or interstate, the Administrator will consider the application on its merits.

(a) *Consultation.* The Administrator may consult with other Federal agencies or entities, States or political subdivisions of States, national governments, local governments in other nations, domestic or international organizations, domestic or international associations, and other persons for views on the danger of noxious weed dissemination into the United States, or interstate, in connection with the proposed movement.

(b) *Inspection of premises.* The Administrator may inspect the site where noxious weeds are proposed to be handled in connection with or after their movement under permit to determine whether existing or proposed facilities will be adequate to prevent noxious weed dissemination if a permit is issued.

**§ 360.303 Approval of an application for a permit to move a noxious weed; conditions specified in permit.**

The Administrator will approve or deny an application for a permit to move a noxious weed. If the application is approved, the Administrator will issue the permit including any conditions that the Administrator has determined are necessary to prevent dissemination of noxious weeds into the United States or interstate. Such conditions may include requirements for inspection of the premises where the noxious weed is to be handled after its movement under the permit, to determine whether the facilities there are adequate to prevent noxious weed

<sup>2</sup> Information on applying for a permit to import a noxious weed into the United States is available at [http://www.aphis.usda.gov/plant\\_health/permits/plantproducts.shtml](http://www.aphis.usda.gov/plant_health/permits/plantproducts.shtml).

<sup>3</sup> Information on applying for a permit to move a noxious weed interstate is available at [http://www.aphis.usda.gov/plant\\_health/permits/plantproducts.shtml](http://www.aphis.usda.gov/plant_health/permits/plantproducts.shtml).

dissemination and whether the conditions of the permit are otherwise being observed. Before the permit is issued, the Administrator will require the responsible person to agree in writing to the conditions under which the noxious weed will be safeguarded.

**§ 360.304 Denial of an application for a permit to move a noxious weed; cancellation of a permit to move a noxious weed.**

(a) The Administrator may deny an application for a permit to move a noxious weed when the Administrator determines that:

(1) No safeguards adequate or appropriate to prevent dissemination of the noxious weed can be implemented; or

(2) The destructive potential of the noxious weed, should it escape despite proposed safeguards, outweighs the probable benefits to be derived from the proposed movement and use of the noxious weed; or

(3) The responsible person, or the responsible person's agent, as a previous permittee, failed to maintain the safeguards or otherwise observe the conditions prescribed in a previous permit and failed to demonstrate the ability or intent to observe them in the future; or

(4) The movement could impede an APHIS eradication, suppression, control, or regulatory program; or

(5) A State plant regulatory official objects to the issuance of the permit on the grounds that granting the permit will pose a risk of dissemination of the noxious weed into the State.

(b) The Administrator may cancel any outstanding permit when:

(1) After the issuance of the permit, information is received that constitutes cause for the denial of an application for permit under paragraph (a) of this section; or

(2) The responsible person has not maintained the safeguards or otherwise observed the conditions specified in the permit.

(c) If a permit is orally canceled, APHIS will provide the reasons for the withdrawal of the permit in writing within 10 days. Any person whose permit has been canceled or any person who has been denied a permit may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the cancellation or denial. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully canceled or denied. 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 will be held to resolve the conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

**§ 360.305 Disposal of noxious weeds when permits are canceled.**

When a permit for the movement of a noxious weed is canceled by the Administrator and not reinstated under § 360.304(c), further movement of the noxious weed covered by the permit into or through the United States, or interstate, is prohibited unless authorized by another permit. The responsible person must arrange for disposal of the noxious weed in question in a manner that the Administrator determines is adequate to prevent noxious weed dissemination.

The Administrator may seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as the Administrator deems appropriate, any noxious weed that is moved without compliance with any conditions in the permit or after the permit has been canceled whenever the Administrator deems it necessary in order to prevent the dissemination of any noxious weed into or within the United States.

**§ 360.400 Treatments.**

(a) Seeds of *Guizotia abyssinica* (niger seed) are commonly contaminated with noxious weed seeds listed in § 360.200, including (but not limited to) *Cuscuta* spp. Therefore, *Guizotia abyssinica* seeds may be imported into the United States only if:

(1) They are treated in accordance with part 305 of this chapter at the time of arrival at the port of first arrival in the United States; or

(2) They are treated prior to shipment to the United States at a facility that is approved by APHIS<sup>4</sup> and that operates in compliance with a written agreement between the treatment facility owner and the plant protection service of the exporting country, in which the treatment facility owner agrees to comply with the provisions of § 319.37–6 and allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. Treatments must be certified in accordance with the conditions described in § 319.37–13(c) of this chapter.

(b) [Reserved]

<sup>4</sup> Criteria for the approval of heat treatment facilities are contained in part 305 of this chapter.

**§ 360.500 Petitions to add a taxon to the noxious weed list.**

A person may petition the Administrator to have a taxon added to the noxious weeds lists in § 360.200. Details of the petitioning process for adding a taxon to the lists are available on the Internet at [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/weeds/downloads/listingguide.pdf](http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/listingguide.pdf). Persons who submit a petition to add a taxon to the noxious weed lists must provide their name, address, telephone number, and (if available) e-mail address. Persons who submit a petition to add a taxon to the noxious weed lists are encouraged to provide the following information, which can help speed up the review process and help APHIS determine whether the specified plant taxon should be listed as a noxious weed:

(a) *Identification of the taxon.* (1) The taxon's scientific name and author; (2) Common synonyms; (3) Botanical classification; (4) Common names; (5) Summary of life history; (6) Native and world distribution; (7) Distribution in the United States, if any (specific States, localities, or Global Positioning System coordinates); (8) Description of control efforts, if established in the United States; and (9) Whether the taxon is regulated at the State or local level.

(b) *Potential consequences of the taxon's introduction or spread.* (1) The taxon's habitat suitability in the United States (predicted ecological range);

(2) Dispersal potential (biological characteristics associated with invasiveness);

(3) Potential economic impacts (e.g., potential to reduce crop yields, lower commodity values, or cause loss of markets for U.S. goods); and

(4) Potential environmental impacts (e.g., impacts on ecosystem processes, natural community composition or structure, human health, recreation patterns, property values, or use of chemicals to control the taxon).

(c) *Likelihood of the taxon's introduction or spread.* (1) Potential pathways for the taxon's movement into and within the United States; and

(2) The likelihood of survival and spread of the taxon within each pathway.

(d) List of references.

**§ 360.501 Petitions to remove a taxon from the noxious weed lists.**

A person may petition the Administrator to remove a taxon from the noxious weeds lists in § 360.200. Details of the petitioning process for removing a taxon from the lists are

available at [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/weeds/downloads/delistingguide.pdf](http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/delistingguide.pdf). Persons who submit a petition to remove a taxon from the noxious weed lists would be required to provide their name, address, telephone number, and (if available) e-mail address. Persons who submit a petition to remove a taxon from the noxious weed lists are encouraged to provide the following information, which can help speed up the review process and help APHIS determine whether the specified plant taxon should not be listed as a noxious weed:

(a) Evidence that the species is distributed throughout its potential range or has spread too far to implement effective control.

(b) Evidence that control efforts have been unsuccessful and further efforts are unlikely to succeed.

(c) For cultivars of a listed noxious weed, scientific evidence that the cultivar has a combination of risk elements that result in a low pest risk. For example, the cultivar may have a narrow habitat suitability, low dispersal potential, evidence of sterility, inability to cross-pollinate with introduced wild types, or few if any potential negative impacts on the economy or environment of the United States.

(d) List of references.

#### PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

19. The authority citation for part 361 continues to read as follows:

**Authority:** 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.3.

20. In § 361.6, paragraph (a)(1) is amended as follows:

a. By removing the entries for “*Caulerpa taxifolia* (Mediterranean clone)”, “*Homeria* spp.”, and “*Mimosa invisa* Martius”.

b. By revising the entries for “*Digitaria abyssinica* (= *D. scalarum*)”, “*Drymaria arenariodes* Humboldt & Bonpland ex Roemer & Schultes”, “*Imperata cylindrica* (L.) Rauschel”, “*Mikania micrantha* Humboldt, Bonpland, & Kunth”, “*Prosopis farcta* (Solander ex Russell) Macbride”, “*Prosopis pallida* (Humboldt & Bonpland ex Willdenow) Humboldt, Bonpland, & Kunth”, “*Setaria pallidifusca* (Schumacher) Stapf & Hubbard”, and “*Spermacoce alata* (Aublet) de Candolle” to read as set forth below.

c. By adding, in alphabetical order, entries for “*Acacia nilotica* (Linnaeus) Willdenow ex Delile”, “*Ageratina riparia* (Regel) R.M. King and H. Robinson”, “*Arctotheca calendula* (Linnaeus) Levyns”, “*Digitaria*

*abyssinica* (Hochstetter ex A. Richard) Stapf”, “*Euphorbia terracina* Linnaeus”, “*Inula britannica* Linnaeus”, “*Mimosa diplotricha* C. Wright”, “*Moraea collina* Thunberg”, “*Moraea flaccida* (Sweet) Steudel”, “*Moraea miniata* Andrews”, “*Moraea ochroleuca* (Salisbury) Drapiez”, “*Moraea pallida* (Baker) Goldblatt”, “*Onopordum acaulon* Linnaeus”, and “*Onopordum illyricum* Linnaeus”.

#### § 361.6 Noxious weed seeds.

(a) \* \* \*

(1) \* \* \*

*Digitaria abyssinica* (Hochstetter ex A. Richard) Stapf

\* \* \* \* \*

*Drymaria arenariodes* Humboldt & Bonpland ex J.A. Schultes

\* \* \* \* \*

*Imperata cylindrica* (Linnaeus) Palisot de Beauvois

\* \* \* \* \*

*Mikania micrantha* Kunth

\* \* \* \* \*

*Prosopis farcta* (Banks & Solander) J.F. Macbride

\* \* \* \* \*

*Prosopis pallida* (Humboldt & Bonpland ex Willdenow) Kunth

\* \* \* \* \*

*Setaria pumila* (Poir.) Roem. & Schult. subsp. *pallidifusca* (Schumach.) B.K. Simon

\* \* \* \* \*

*Spermacoce alata* Aublet

\* \* \* \* \*

Done in Washington, DC, this 3rd day of June 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9–13507 Filed 6–9–09; 8:45 am]

**BILLING CODE 3410–34–P**

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 1220

[Doc. No. AMS–LS–09–0026]

#### Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would adjust the number of members on the United Soybean Board (Board) to reflect changes in production levels that have

occurred since the Board was last reapportioned in 2006. As required by the Soybean Promotion, Research, and Consumer Information Act (Act), membership on the Board is reviewed every 3 years and adjustments are made accordingly. This proposed change would result in an increase in Board membership for one State, increasing the total number of Board members from 68 to 69. These changes would be reflected in the Soybean Promotion and Research Order (Order) and would be effective for the 2010 appointment process.

**DATES:** Comments must be received by August 10, 2009.

**ADDRESSES:** Comments should be posted online at <http://www.regulations.gov>. Comments received will be posted without change, including any personal information provided. All comments should reference the docket number, AMS–LS–09–0026; the date of submission; and the page number of this issue of the **Federal Register**. Comments may also be sent to Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, Agricultural Marketing Service (AMS), Department of Agriculture (USDA), Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Telephone 202/720–1115; Fax 202/720–1125; or e-mail to [Kenneth.Payne@ams.usda.gov](mailto:Kenneth.Payne@ams.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

##### Executive Order 12988

This proposed rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This action would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Order may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order,