

County line to the southwest corner of sec. 33, T. 2 S., R. 5 E.; then north to the northwest corner of sec. 33; then west to the southwest corner of sec. 30, T. 2 S., R. 5 E.; then north to the southeast corner of sec. 25, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 25, T. 2 S., R. 4 E.; then north to the southwest corner of sec. 13, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 15, T. 2 S., R. 4 E.; then north to the northwest corner of sec. 3, T. 2 S., R. 4 E.; then east to the southwest corner of sec. 35, T. 1 S., R. 4 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 4 E.; then east to the northeast corner of sec. 33, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 27, T. 1 S., R. 5 E.; then east to the northeast corner of sec. 27, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 23, T. 1 S., R. 5 E.; then east to the northeast corner of sec. 21, T. 1 S., R. 6 E.; then south to the southeast corner of sec. 21, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 27, T. 1 S., R. 6 E.; then south to the southeast corner of sec. 27, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 31, T. 1 S., R. 7 E.; then south to the northwest corner of sec. 5, T. 2 S., R. 7 E.; then east to the northeast corner of sec. 3, T. 2 S., R. 7 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 7 E.; then east to the northeast corner of sec. 36, T. 1 S., R. 7 E. and the Maricopa/Pinal County line; then south along the Maricopa/Pinal County line to the point of beginning.

* * * * *

California

Riverside County. That portion of Riverside County known as the Palo Verde Valley (in part) bounded by a line drawn as follows: Beginning at the intersection of 22nd Avenue and State Highway 78; then north on State Highway 78 to an unnamed road at 33.548088 latitude and -114.656718 longitude; then east on the unnamed road to an unnamed canal at 33.548066 latitude and -114.647868 longitude; then north on the unnamed canal to 33.548360 latitude and 114.647877 longitude; then east from that point to 33.548360 latitude and -114.643696 longitude; then north from that point to 33.550088 latitude and -114.643692 longitude; then east from that point to 33.550044 latitude and -114.639367 longitude; then north from that point to 33.551705 latitude and -114.639367 longitude; then east from that point to the Atchison, Topeka, and Santa Fe Railroad tracks at 33.551740 latitude and -114.634545 longitude; then southwest along the Atchison, Topeka,

and Santa Fe Railroad tracks to 33.548300 latitude and -114.637487 longitude; then east from that point to the C Canal at 33.548277 latitude and -114.626363 longitude; then north along the C Canal to 33.549084 latitude and -114.626372 longitude; then east from that point to South Defrain Boulevard at 33.549145 latitude and -114.621792 longitude; then south on South Defrain Boulevard to 33.548217 latitude and -114.621774 longitude; then east from that point to Lovekin Drain at 33.548338 latitude and -114.612488 longitude; then south along Lovekin Drain to 22nd Avenue; then east on 22nd Avenue to South Lovekin Boulevard; then south on South Lovekin Boulevard to 33.541141 latitude and 114.603889 longitude; then east from that point to 33.541274 latitude and -114.595394 longitude; then southeast from that point to 33.540357 latitude and -114.59219 longitude; then south from that point to 33.536702 latitude and -114.595261 longitude; then northeast from that point to 33.537766 latitude and -114.593187 longitude; then east from that point to an unnamed canal beginning at 33.537887 latitude and -114.586582 longitude; then south along the unnamed canal to 33.534809 latitude and -114.586554 longitude; then southeast from that point to S C and D Boulevard at 33.534561 latitude and -114.586228 longitude; then south on S C and D Boulevard to 33.523400 latitude and -114.585948 longitude; then east from that point to the D10-11 Canal at 33.523596 latitude and -114.577832 longitude; then southwest along the D1011 Canal to the boundary line of Riverside County at 33.540900 latitude and -114.544620 longitude; then southeast along the Riverside County boundary line to 33.455829 latitude and 114.623143 longitude; then west from that point to 33.455783 latitude and -114.669038 longitude; then north from that point to South End Drain at 33.456190 latitude and -114.669076 longitude; then north along South End Drain to 34th Avenue; then west on 34th Avenue to 33.463226 latitude and -114.682378 longitude; then north from that point to the C-18-1 Canal; then west along the C-18-1 Canal to 33.470427 latitude and -114.691076 longitude; then north from that point to an unnamed canal at latitude 33.474836 and -114.691197 longitude; then southwest along the unnamed canal to Palo Verde Lagoon; then northeast along Palo Verde Lagoon to Rannells Drain; then north along Rannells Drain to 33.499639 latitude and 114.961526 longitude; then north

from that point to the C-03 Canal; then north along the C-03 Canal to 33.522835 latitude and -114.687051 longitude; then north from that point to 24th Avenue; then east on 24th Avenue to the C-03 Canal; then north along the C-03 Canal to 33.537501 latitude and -114.682892 longitude; then east from that point to Stephenson Boulevard; then north on Stephenson Boulevard to 22nd Avenue; then east on 22nd Avenue to the point of beginning.

§ 301.89-5 [Amended]

■ 3. Section 301.89-5, is amended by removing paragraph (a)(3) and footnote 1.

§ 301.89-6 [Amended]

■ 4. In § 301.89-6, in paragraph (a) introductory text and paragraph (a)(2), footnotes 2 and 3 are redesignated as footnotes 1 and 2, respectively.

§ 301.89-7 [Amended]

■ 5. In § 301.89-7, footnote 4 is redesignated as footnote 3.

■ 6. In § 301.89-9, paragraph (a) is amended as follows:

■ a. By redesignating footnote 5 as footnote 4.

■ b. By revising newly redesignated footnote 4 to read as set forth below.

§ 301.89-7 Assembly and inspection of regulated articles.

(a) * * * 4

⁴ See footnote 1.

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Done in Washington, DC, this 4th day of November 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010-28347 Filed 11-9-10; 8:45 am]

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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: Final rule.

SUMMARY: We are amending the regulations governing the importation and interstate movement of noxious

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

DATES: *Effective Date:* December 10, 2010.

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 (USDA) 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.

On June 10, 2009, we published in the **Federal Register** (74 FR 27456-27467, Docket No. APHIS-2007-0146) a proposal¹ to make several changes to the regulations. Briefly, we proposed to:

- 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.

We solicited comments concerning our proposal for 60 days ending August 10, 2009. We received six comments by that date. They were from a private citizen, a seed organization, a

biotechnology industry organization, researchers, and a representative of a State government. The issues they raised that are germane to the proposed rule are discussed below by topic.

Concurrence From States in Approving Noxious Weed Permits

We proposed to add to the regulations new §§ 360.301 through 360.305 to provide additional information about the requirements for permits to import or move noxious weeds. Proposed § 360.304 contained information about denial and cancellation of permits.

In paragraph (a) of proposed § 360.304, we proposed to provide that the Administrator could deny an application for a permit to move a noxious weed when the Administrator has determined that, among other things, 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. However, we went on 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 a State plant regulatory official objected to the issuance of a permit—for example, if the Administrator determined that the safeguards specified in the permit were adequate to address the risk of dissemination.

One commenter stated that the approval of a permit when a State plant regulatory official objected to the approval could potentially put an importer in an unfortunate position between APHIS and a State authority. The commenter stated that APHIS needs to reach positive resolution with the States when deciding to approve permits to avoid putting the importer in a bind.

APHIS’ decisions on whether to grant a permit take into account the views of the State, but ultimately APHIS has the final authority to grant or deny an application for a permit. However, in all cases, APHIS attempts to come to a positive resolution of any difference of opinion with a State plant health official, as the commenter recommends. Our State plant health cooperators are key to the successful enforcement and functioning of the Federal noxious weed regulations. In practice, we would rarely act contrary to States’ concerns regarding issuing a permit for the importation or interstate movement of taxa listed as Federal noxious weeds, and we would provide information to specifically support issuing the permit if we were to do so.

¹To view the proposed rule and the comments we received, go to <http://www.regulations.gov/jdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0146>.

New Section With Treatment for Niger Seed

We proposed to add a new § 360.400 indicating that *Guizota abyssinnica* (niger) seed is required to be treated. This requirement is found in our regulations governing the importation of nursery stock in § 319.37–6; we proposed to duplicate the conditions that are specified in that section in proposed § 360.400, as most niger seed is not imported for use as nursery stock but as birdseed.

(NOTE: In an interim rule published and effective on October 19, 2009 (74 FR 53397–53400, Docket No. APHIS–2008–0097), we added a new § 360.400 to codify the preemptive effects of the regulations in part 360. This final rule redesignates § 360.400 as § 360.600 to accommodate the new provisions we proposed to add in June 2009.)

One commenter stated that it is not entirely clear why proposed § 360.400 was included with the noxious weed regulations, given that *G. abyssinnica* is not listed as a noxious weed.

Although *G. abyssinnica* itself is not a noxious weed, imported lots of *G. abyssinnica* are commonly contaminated with various noxious weed seeds, including *Cuscuta* spp. We have determined that heat treatment effectively mitigates the risk associated with noxious weed seeds in lots of *G. abyssinnica*. Because *G. abyssinnica* is not typically imported for use as nursery stock, importers may not know to look in the nursery stock regulations in § 319.37–6 to find the requirements for its importation. Importers of seed more commonly look at the requirements in parts 360 and 361. Indicating that *G. abyssinnica* must be heat treated for noxious weed seeds in part 360 will make this requirement more prominent to its intended audience and thus improve the clarity and effectiveness of the regulations.

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,² the regulations have not contained any information about this process. We proposed to add new §§ 360.500 and 360.501 to provide such information.

In both sections, we proposed to encourage petitioners to provide several pieces of information along with their petitions. Providing such information

can help speed up the review process and help APHIS determine whether the specified plant taxon should be listed as a noxious weed. However, we did not propose to require that such information be provided.

One commenter characterized our proposal to request information as a list of criteria for adding or removing a taxon from the list of noxious weeds, and stated that it is not clear whether or not all criteria need to be met in order to add or remove taxa. The commenter expressed concern that justifying additions solely on the basis of one criterion (such as potential economic impacts) could result in a noxious weed list populated with plant species that are not noxious from a biological or ecological perspective. The commenter asked us to add language to these sections stating that all criteria must be addressed and considered in any petition to add (or remove) taxa to the noxious weed list.

This commenter also stated that the proposed regulations do not include any discussion regarding how APHIS will evaluate petitions to add a taxon to or remove a taxon from the noxious weed lists, or communicate their decisions to the public. The commenter recommended that APHIS establish a transparent process or procedures by which APHIS will conduct these evaluations and communicate decisions to the public. The commenter also recommended that these procedures include a sufficient comment period (up to 180 days) to give stakeholders who may be impacted an opportunity to respond to petitions and provide input.

The various types of information we proposed to request are not a comprehensive set of criteria for listing a taxon as a noxious weed or removing a taxon from the list of noxious weeds; rather, we proposed to request information we would find useful in investigating whether or not a plant should be listed as a noxious weed. We did not propose to require petitioners to include all the different types of information we requested because that information may not be available to the petitioner. Accordingly, we are not taking the commenter's suggestion to require petitioners to provide all this information.

If we receive a petition to list a taxon as a noxious weed or to remove a taxon from the list of noxious weeds, we will communicate with the petitioner regarding whether we are proceeding with a weed risk assessment (WRA), and, if not, why not.

We conduct our WRAs in accordance with our Weed-Initiated Pest Risk Assessment Guidelines for Qualitative

Assessments, regardless of whether the assessment is triggered by a petition, through research and identification of a potential noxious weed, or discovery of an outbreak or introduction of a potential noxious weed. These guidelines are available on the Web at http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/wra.pdf. These guidelines are consistent with the International Plant Protection Convention's (IPPC) International Standard for Phytosanitary Measures (ISPM) No. 2, "Framework for pest risk analysis."³ If we perform a WRA in response to a petition, we will review all the information supplied by the petitioner as part of this process; we will also review other data sources to ensure that our conclusions regarding the taxon in question are based on the broadest possible base of information.

If our WRA and any other analysis we may conduct indicate that a taxon should be listed as a noxious weed, we will publish an interim rule or proposed rule in the **Federal Register** to amend the list of noxious weeds in § 360.200 and, if appropriate, the list of noxious weed seeds in part 361. Such publication provides both public notice and a period during which stakeholders who may be impacted can provide input. We will make the WRA and any other analysis we may conduct available along with the interim rule or proposed rule. We typically provide for a comment period of 60 days on interim rules and proposed rules; however, we have the option to allow for a longer comment period should circumstances warrant it.

We proposed to add a new § 360.500 to provide information about the process of adding a taxon to the noxious weed list. Among other things, we proposed to encourage petitioners 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

² At http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/index.shtml.

³ To view this ISPM on the Internet, go to <http://www.ippc.int/IPPC/En/default.jsp> and click on the "Adopted ISPMs" link under the "Standards (ISPMs)" heading.

patterns, property values, or use of chemicals to control the taxon).

Referring to the request for information about potential economic impacts of a taxon petitioned to be listed as a noxious weed, one commenter stated that the use of such information could result in petitions for classifying certain genetically engineered (GE) crop species as noxious weeds. APHIS' Biotechnology Regulatory Services (BRS) program regulates GE organisms, and the commenter assumed that BRS will use the noxious weed authority of the PPA when such issues arise with GE crops. To ensure consistency, the commenter recommended that PPQ and BRS coordinate to ensure that these regulations will be uniformly interpreted when such issues arise. If there is not consistency, the commenter stated, it is conceivable that a petitioner could apply to both PPQ and BRS to list (or delist) the same taxon and end up with different results.

We agree with the commenter's recommendation that PPQ and BRS coordinate when we receive petitions to list GE crops as noxious weeds. PPQ and BRS regularly discuss such issues and will continue to do so. It should be noted that, currently, BRS regulates GE organisms only under the plant pest authority of the PPA.

One commenter stated that, while the information requested will be necessary to determining whether to list a taxon as a noxious weed, certain baseline information will also be required and should also be specifically referenced in the regulations. As an initial matter, the commenter stated, information must be provided to show that the plant in question causes injury recognized under the PPA and the IPPC. The commenter quoted the Background section of a proposed rule regarding the importation and interstate movement of GE organisms published in the **Federal Register** on October 9, 2008 (73 FR 60008–60048, Docket No. APHIS–2008–0023), which stated that the first consideration in determining whether a plant is a noxious weed is identifying what direct injury or damage (physical harm) the plant causes.

While we proposed in § 360.500 to request that petitioners provide information regarding the potential economic and environmental impacts of spread of the plant in question, we did not propose to request or require information regarding the injury the offending plant may inflict. The commenter stated that, while in many instances this information will be obvious, it is nevertheless essential to a noxious weed determination and must

not be overlooked. In all cases, the commenter stated, APHIS must first make an initial finding of physical harm caused by the plant at issue; only then may APHIS continue the risk assessment and risk mitigation process to determine whether further regulation is appropriate.

We have determined that it is not necessary to require that petitioners provide information about the direct harm caused by a taxon in a petition to list a taxon as a noxious weed. Such information may not be available to the petitioner; for example, a petitioner might notice unchecked growth of a weed in an area without knowing the precise means by which the weed was displacing native vegetation.

As discussed earlier, after receiving a petition, we consider all available information relating to that taxon, not just the information provided in the petition, and we conduct our weed risk assessments in accordance with our Weed-Initiated Pest Risk Assessment Guidelines for Qualitative Assessments. These guidelines provide specific examples of what we mean by potential economic impacts and potential environmental impacts. Potential economic impacts include, but are not limited to:

- Reduced crop yield (e.g., by parasitism, competition, or by harboring other pests).
- Lower commodity value (e.g., by increasing costs of production, lowering market price, or a combination); or if not an agricultural weed, by increasing costs of weed control.
- Loss of markets (foreign or domestic) due to presence of a new quarantine pest.

Potential environmental impacts include, but are not limited to, considerations of whether the weed, if introduced, could:

- Cause impacts on ecosystem processes (alteration of hydrology, sedimentation rates, a fire regime, nutrient regimes, changes in productivity, growth, yield, vigor, etc.).
- Cause impacts on natural community composition (e.g., reduce biodiversity, affect native populations, affect endangered or threatened species, impact keystone species, impact native fauna, pollinators, or microorganisms, etc.).
- Cause impacts on community structure (e.g., change density of a layer, cover the canopy, eliminate or create a layer, impact wildlife habitats, etc.).
- Have impacts on human health such as allergies or changes in air or water quality.

- Have sociological impacts on recreation patterns and aesthetic or property values.

- Stimulate control programs including toxic chemical pesticides or introduction of a nonindigenous biological control agent.

Risk ratings are then determined based on how many of the impacts are posed by the taxon (except for taxa that affect endangered or threatened species, which are always rated high risk for environmental impacts). The WRA process thus considers in detail the direct injury or damage the plant may cause. We believe this satisfies the commenter's overall concern that the direct injury or damage caused by a plant should be considered in determining whether to list it as a noxious weed.

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

We proposed 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). Commenters who addressed these additions supported them.

One commenter stated that the addition of the seven new taxa could have indirect adverse consequences on seed production. The commenter stated that many companies have overseas operations in which seed is produced in a foreign country and shipped back to the United States for sale in the United States or for value-adding and repackaging for re-export. Some producers' offshore production sites likely could be in areas where these taxa are endemic, the commenter stated, and several of the new taxa, such as *Arctotheca calendula*, *Ageratina riparia*, *Euphorbia terracina*, *Onopordum acaulon*, and *O. illyricum*, could impact grass seed production as well as row crop and vegetable crop seed production. If these new taxa, or whenever any new taxa, are added to the noxious weed list, the commenter requested that we provide detailed information on the occurrence and distribution of these taxa, as well as specific information on their seed morphology and biology, so that seed production companies can implement measures to minimize contamination of seed in those production areas where these taxa pose a threat.

We list taxa as noxious weeds based on the risk they pose, not on their geographical distribution. We provided the information we have on the international distribution, seed

morphology, and biology of these weeds in the WRAs that were provided along with the proposed rule on Regulations.gov (see footnote 1 for instructions on accessing Regulations.gov). Because these weeds have significant effects on agricultural production and the environment, as discussed in the WRAs, seed producers will likely know whether these noxious weeds are present in or near their production facilities; for economic reasons, we presume that they would take appropriate steps to prevent contamination of their seed with seeds of these weeds.

We proposed to list *A. calendula* (capeweed) as a noxious weed. In the proposed rule, we stated that *A. calendula* is currently present in California and that 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 spread from cultivation into wild or managed environments. In addition, absent inflorescence, identifying a plant as a member of one type or another of *A. calendula* can be difficult. We invited public comment on whether it is appropriate to regulate the entire species *A. calendula*, as we proposed to do, or whether we should only regulate the purple-flowered, seed-producing type.

Two commenters addressed this issue. One stated that the less noxious form (we described it as yellow-flowered, while the commenter described it as orange-flowered) is indistinguishable from the purple-flowered form when not in flower. The commenter pointed out that enforcement would be difficult if only one form is regulated, and recommended that we add the entire species to the list.

Another commenter agreed with this comment and added other points to consider when determining whether to regulate the entire species:

- The commenter stated that the infertile type is also invasive. According to one report from the California Invasive Plant Inventory (<http://www.cal-ipc.org>), it is more competitive than the fertile form. It can escape cultivation by creeping stolons and spread aggressively.

- The commenter asked whether purple flower color is always linked to fertile seed production and whether this is always a reliable characteristic for determining the type of capeweed.

- The commenter asked whether the genetic basis of seed infertility in the sterile type is understood. If yes, the

commenter asked, is the sterility stable? Or is it capable of reverting to fertility under certain circumstances or can it cross with the fertile type?

- The commenter stated that the sterile type is just as potentially toxic to sheep, cattle, pigs and horses as the fertile type, due to presence of nitrates.

Since the publication of the proposed rule, we have found more information about the botanical classification of what we characterized as the fertile and sterile types of *A. calendula*. These are actually two different species; *A. calendula* is the fertile type, while the sterile type has been designated *A. prostrata* (creeping capeweed).⁴ There are morphological differences between the two species that make it practical to distinguish them for enforcement purposes, as well.

As we had proposed to regulate *A. calendula* as a noxious weed on the basis of the damage caused by what we had characterized as the fertile type, we are adding *A. calendula* to the list of terrestrial noxious weeds and to the list of noxious weed seeds with no tolerances applicable to their introduction, as we proposed. We will evaluate *A. prostrata* separately to determine whether it, too, needs to be added to those lists, with the information and questions provided by the second commenter in mind.

One commenter, citing the “no tolerances applicable to their introduction” language, stated that this terminology strongly indicates that there is a zero tolerance for noxious weed seed contaminants in seed consignments. The commenter understood the basis for zero tolerance, but also recognizes that achieving this level of risk reduction will at times be very difficult. The commenter asked that APHIS seek input from the seed industry on the development of a rational tolerance for noxious weed seed contaminants that is achievable by the industry. The commenter also asked that APHIS add language to this section stating that whenever noxious weed seed contaminants are detected in seed consignments, companies will be given the option of recleaning and re-inspection according to established APHIS procedures and protocols, and that destruction or re-export will be considered a last option.

The commenter refers to existing text from § 361.6(a)(1) regarding seeds with no tolerances applicable to their introduction that we were discussing in

the Background section of the proposal. Within § 361.6, paragraph (c) discusses how certain seed may not be counted toward the tolerance (for example, damaged seed). However, it is important to prevent even one individual, viable seed of taxa listed in § 361.6(a)(1) from entering the United States, as these taxa have been determined to be capable of causing agricultural and environmental damage should they be introduced into the United States. Thus, the zero-tolerance standard is appropriate for these taxa. We are making no changes in response to this comment.

Common Names

One commenter addressed the common names of noxious weeds. With regard to the seven taxa we proposed to add to the list of terrestrial noxious weeds and to the list of noxious weed seeds with no tolerances applicable to their introduction, the commenter noted that the common names we included with the scientific names in the proposed regulatory text often differed from those in the USDA’s PLANTS Web site (<http://plants.usda.gov>). The commenter stated that it would be less confusing if the proposed regulatory text and the PLANTS Web site agreed on common names, and that using the most common usage would better serve the general public and others.

Common names, including those on the PLANTS Web site, are unofficial. It is often difficult to determine the most common usage, which varies worldwide. For these reasons, we rely on the scientific name of a taxon, which is the internationally recognized scientific standard, as the official name for regulatory purposes. We list a common name for the convenience of nonspecialists.

APHIS normally lists the most recent common name found in one or more of three sources. The Weed Science Society of America (WSSA) publishes a Composite List of Weeds with their officially recognized common names, which APHIS would normally use. WSSA lists few of the weeds we proposed to add because of their lack of distribution in the United States. Since the preparation of the WRAs, WSSA has added several of the species we proposed to add to the list of noxious weeds to its Composite List of Weeds. Other sources of common names are the Germplasm Resources Information Network (GRIN) and the Integrated Taxonomic Information System (ITIS) database. PLANTS tends to favor names in ITIS.

In this final rule, we are changing common names to match WSSA where names have been recognized since the

⁴ See the Draft of the Second Edition of the Jepson Manual: Vascular Plants of California; and Tropicos, the database of the Missouri Botanical Garden. http://mobot.mobot.org/cgi-bin/search_vast (accessed August 24, 2010).

original draft. In cases where WSSA does not list a common name, we have compared GRIN and ITIS and changed to names listed in both databases, where available. The following table summarizes the proposed common names, the common names provided in the references listed above, and the changes in the final rule.

TABLE 1—COMMON NAMES OF SEVEN NEW NOXIOUS WEED TAXA

| Scientific name | Proposed rule | WSSA | GRIN | ITIS | PLANTS | Final rule |
|-----------------------------------|---------------------|--------------------------|--|---|---------------------------|---|
| <i>Acacia nilotica</i> | prickly acacia | (no common name listed). | acacia à gomme, acacia gomifera, arabische Gummiakazie, babul acacia, Egyptian acacia, gommier rouge, Indian gum-arabic-tree, lekkeruikpeul, scented-thorn, thorn-mimosa, thorny acacia. | gum arabic tree .. | gum arabic tree. | gum arabic tree, thorny acacia. |
| <i>Ageratina riparia</i> | mistflower | creeping croftonweed. | creeping croftonweed, hamakua pamakani, mistblom, mistflower, river eupatorium. | creeping croftonweed, mist flower, spreading snakeroot. | spreading snakeroot. | creeping croftonweed, mistflower. |
| <i>Arctotheca calendula</i> | capeweed | capeweed | Capeweed, venidium ... | Cape weed, capeweed. | Capeweed | capeweed (no changes). |
| <i>Euphorbia terracina</i> | false caper | Geraldton carnationweed. | false caper, Geraldton carnation-spurge, Geraldton carnationweed, leiteira. | Geraldton carnation weed. | Geraldton carnation weed. | false caper, Geraldton carnation weed. |
| <i>Inula britannica</i> | British elecampane. | British elecampane. | British elecampane, ou ya xuan fu hua, xuan fu hua, British yellowhead. | British yellowhead | British yellowhead. | British elecampane, British yellowhead. |
| <i>Onopordum acaulon</i> | stemless thistle. | (no common name listed). | cardo, horse thistle, stemless onopordon, stemless thistle. | (no common name listed). | (no common name listed). | stemless thistle (no changes). |
| <i>Onopordum illyricum</i> | Illyrian thistle .. | Illyrian thistle .. | cardo-ilírico, Illyrian thistle. | Illyrian cottonthistle. | Illyrian cottonthistle. | Illyrian thistle (no changes). |

We also proposed to make several nomenclature changes for taxa currently listed as terrestrial noxious weeds and as noxious weed seeds with no tolerances applicable to their introduction. Among these changes, we proposed to update the regulations by removing the entry for *Homeria* spp. from both §§ 360.200(c) and 361.6(a)(1) and adding entries for *Moraea collina*, *M. flaccida*, *M. miniata*, *M. ochroleuca*, and *M. pallida* in its place.

The commenter stated that the common names we proposed to use for the *Moraea* species are contrived and confusing. In the proposed rule, *M.*

flaccida is called the one-leaf Cape tulip, but most of the others also have one leaf. *M. collina* is called the apricot tulp, but other species are similarly colored, and likewise *M. ochroleuca* is called the red tulp even though it has yellow flowers. The commenter stated that it appears that “tulp” is a typographical error, and will appear to be an error to many others. To reduce confusion, the commenter recommended that all of the species be called “Cape tulip,” similar to how *Salvinia* spp. are all called “giant salvinia” on the present list, or that they be listed without common name as with

Cuscuta and *Prosopis* species on the current list.

As noted earlier, we rely on the scientific name of a taxon as the official name for regulatory purposes. We list a common name for the convenience of non-specialists. “Tulp” is the Dutch and Afrikaans word for “tulip” and is thus in common use internationally.

We conducted a review of the common names of the new *Moraea* spp. similar to the one conducted for the common names of the seven new taxa. The results of this review are shown in table 2.

TABLE 2—COMMON NAMES OF FIVE MORAEA SPECIES

| Scientific name | Proposed rule | Wiersema & Leon ¹ | WSSA | GRIN | ITIS | PLANTS | Final rule |
|--|----------------------|------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-----------------------------------|
| <i>Moraea collina</i> (= <i>Homeria collina</i>). | apricot tulp | (no common name listed). | (no common name listed). | (no common name listed). | (no common name listed). | Cape tulip | apricot Cape-tulip. |
| <i>Moraea flaccida</i> (= <i>Homeria flaccida</i>). | one-leaf Cape-tulip. | one-leaf Cape-tulip. | (no common name listed). | one-leaf Cape-tulip. | (no common name listed). | (no common name listed). | one-leaf Cape-tulip (no changes). |
| <i>Moraea miniata</i> (= <i>Homeria miniata</i>). | two-leaf Cape-tulip. | two-leaf Cape-tulip. | (no common name listed). | two-leaf Cape-tulip. | (no common name listed). | (no common name listed). | two-leaf Cape-tulip (no changes). |

TABLE 2—COMMON NAMES OF FIVE MORAEA SPECIES—Continued

| Scientific name | Proposed rule | Wiersema & Leon ¹ | WSSA | GRIN | ITIS | PLANTS | Final rule |
|--|--------------------|------------------------------|--------------------------|--------------------|--------------------------|--------------------------|--------------------|
| <i>Moraea ochroleuca</i> (= <i>Homeria ochroleuca</i>). | red tulip | red tulip | (no common name listed). | red tulip | (no common name listed). | (no common name listed). | red Cape-tulip. |
| <i>Moraea pallida</i> (= <i>Homeria pallida</i>). | yellow tulip | yellow tulip | (no common name listed). | yellow tulip | (no common name listed). | (no common name listed). | yellow Cape-tulip. |

Wiersema, J.H. and Leon, Blanca. 1999. World economic plants: A standard reference. p. 261.

Based on this review, we are changing the common name for *M. collina* to “apricot Capetulip,” to be more consistent with the PLANTS database while ensuring that *M. collina* can be differentiated from the other regulated Cape-tulip. We also recognize that U.S. regulated entities may not be familiar with the term “tulip,” and that listing all the new *Moraea* spp. as some variety of “Cape-tulip” would help to ensure consistency in naming the genus. For that reason, we have changed the proposed common name of *M. ochroleuca*, “red tulip,” to read “red Cape-tulip,” in this final rule and we have changed the proposed common name of *M. pallida*, “yellow tulip,” to read “yellow Cape-tulip” in this final rule.

Miscellaneous Change

We proposed to revise current § 360.300. Proposed paragraph (a) in § 360.300 stated that no person may move a Federal noxious weed into or through the United States, or interstate, unless he or she applies for a permit to move a noxious weed in accordance with § 360.301, the permit application is approved, and the movement is consistent with the specific conditions contained in the permit. Proposed paragraph (b) of § 360.300 stated that persons who move noxious weeds into or through the United States, or interstate, without complying with those conditions will be subject to such criminal and civil penalties as are provided by the Plant Protection Act (7 U.S.C. 7701 *et seq.*).

We are not including proposed paragraph (b) in this final rule, as it is not necessary to state explicitly in the regulations that violations of the regulations are subject to the penalties prescribed in the act under whose authority they are promulgated. The requirements in proposed paragraph (a) and its subparagraphs (a)(1) through (a)(3) appear in this final rule as undesignated introductory text for § 360.300 and as paragraphs (a) through (c), respectively.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Federal Preemption

On May 20, 2009, the President issued a memorandum to the heads of executive departments and agencies on the subject of preemption. The memorandum states that it is the general policy of the Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. The memorandum further states:

To ensure that executive departments and agencies include statements of preemption in regulations only when such statements have a sufficient legal basis:

- Heads of departments and agencies should not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are also included in the codified regulation.
- Heads of departments and agencies should not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption, including the principles outlined in Executive Order 13132.

Since 1996, Executive Order 12988, “Civil Justice Reform,” has required agencies to include in each regulation a statement regarding its preemptive effects. APHIS has included a statement of preemptive effects in regulatory preambles under the heading “Executive Order 12988.”

In compliance with the May 2009 memorandum from the White House, we are adding preemption provisions to part 352 that apply to this rule, as well as to the existing regulations in part 352.

Preemption provisions have already been added to parts 319, 360, and 361.

Part 352 contains safeguarding regulations for the movement through the United States of plants, plant products, plant pests, soil, and other products and articles that may be infested or infected by or contain plant pests or noxious weeds.

Under section 436 of the Plant Protection Act (7 U.S.C. 7756), no State or political subdivision of a State may regulate in foreign commerce any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order to control a plant pest or noxious weed, to eradicate a plant pest or noxious weed, or to prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed. Therefore, in accordance with section 436 of the Plant Protection Act, the regulations in part 352 preempt all State and local laws and regulations that are inconsistent with or exceed the regulations in part 352.

Accordingly, in this final rule, we are adding a new paragraph (d) in § 352.2 to codify the preemptive effects of the regulations in part 352. To reflect this change, we have renamed § 352.2 “Purpose; relation to other regulations; applicability; preemption of State and local laws.”

Executive Order 12866 and Regulatory Flexibility Act

This final 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.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. As described in the economic analysis, the majority of producers, importers, and merchants that may be affected by the final rule are small entities. However, there is no evidence of any significant trade in the seven taxa that are being added to the list of noxious weeds, and the other changes in the final rule serve to clarify

the regulations and improve their effectiveness. Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The full economic analysis may be viewed on the Regulations.gov Web site. (See footnote 1 in this document for a link to the analysis on Regulations.gov.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 amending 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.

■ 4. Section 352.2 is amended as follows:

■ a. By revising the section heading to read as set forth below.

■ b. In paragraph (a) introductory text, 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.

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

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

§ 352.2 Purpose; relation to other regulations; applicability; preemption of State and local laws.

* * * * *

(d) Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not regulate in foreign commerce any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order to control a plant pest or noxious weed, to eradicate a plant pest or noxious weed, or to prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed.

§ 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 or 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 “part 319 or 330” and adding the words “parts 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 paragraph (b) designation and 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 quinquenervia* (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”.

■ d. In paragraph (b), by revising the entries for “*Cuscuta ceanothii* Behr,” “*Cuscuta cephalanthii* Engelman”, “*Cuscuta corylii* Engelman”, “*Cuscuta exalta* Engelman”, “*Cuscuta obtusiflora* Humboldt, Bonpland, & Kunth”, “*Cuscuta rostrata* Shuttleworth ex Engelman”, “*Cuscuta umbrellata* Humboldt, Bonpland, & Kunth”, and “*Cuscuta vetchii* Brandegee” to read as set forth below.

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

■ f. 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.

■ g. In paragraph (c), by adding, in alphabetical order, entries for “*Acacia nilotica* (Linnaeus) Willdenow ex Delile (gum arabic tree, thorny acacia)”, “*Ageratina riparia* (Regel) R.M. King and H. Robinson (creeping croftonweed, mistflower)”, “*Arctotheca calendula* (Linnaeus) Levyns (capeweed)”, “*Digitaria abyssinica* (Hochstetter ex A. Richard) Stapf (African couchgrass, fingergrass)”, “*Euphorbia terracina* Linnaeus (false caper, Geraldton carnation weed)”, “*Inula britannica* Linnaeus (British elecampane, British yellowhead)”, “*Mimosa diplotricha* C. Wright (giant sensitive-plant)”, “*Moraea collina* Thunberg (apricot Cape-tulip)”, “*Moraea flaccida* (Sweet) Steudel (one-leaf Cape-tulip)”, “*Moraea miniata* Andrews (two-leaf Cape-tulip)”, “*Moraea ochroleuca* (Salisbury) Drapiez (red Cape-tulip)”, “*Moraea pallida* (Baker) Goldblatt (yellow Cape-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 plants¹ as noxious weeds to prevent their introduction into the United States or their dissemination within the United States:

- (a) * * *
 - Caulerpa taxifolia* (Vahl) C. Agardh, Mediterranean strain (killer algae)
 - * * * * *
 - Eichornia azurea* (Swartz) Kunth
 - * * * * *
 - Melaleuca quinquenervia* (Cavanilles) S.T. Blake
 - * * * * *
- (b) * * *
 - Cuscuta ceanothii* Behr
 - Cuscuta cephalanthii* Engelman
 - * * * * *

¹ 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.

- Cuscuta coryli* Engelmänn
* * * * *
- Cuscuta exaltata* Engelmänn
* * * * *
- Cuscuta obtusiflora* Kunth
* * * * *
- Cuscuta rostrata* Shuttleworth ex
Engelmänn & Gray
* * * * *
- Cuscuta umbellata* Kunth
* * * * *
- Cuscuta veatchii* Brandegeee
* * * * *
- (c) * * *
- Digitaria velutina* (Forsskal) Palisot de
Beauvois (velvet fingergrass, annual
couchgrass)
Drymaria arenarioides 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.

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

- (a) He or she applies for a permit to move a noxious weed in accordance with § 360.301;
- (b) The permit application is approved; and
- (c) The movement is consistent with the specific conditions contained in the permit.

(Approved by the Office of Management and Budget under control number 0579–0054)

■ 18. New §§ 360.301 through 360.305 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.² 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.³ 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.

² 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.

³ 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.

§ 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 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 [Redesignated as § 360.600]

■ 19. Section 360.400 is redesignated as § 360.600.

■ 20. New §§ 360.400, 360.500, and 360.501 are added to read as follows:

§ 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 APHIS⁴ 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]

§ 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. 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

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

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. 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

■ 21. 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.

■ 22. 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.) Raeuschel”, “*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”, 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”, “*Euphorbia terracina* Linnaeus”, “*Inula britannica* Linnaeus”, “*Mimosa diplotricha* C. Wright”, “*Moraea collina* Thunberg”, “*Moraea flaccida* (Sweet) Steudel”, “*Moraea linniana* 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. *pallidefusca* (Schumach.) B.K. Simon

* * * *

Spermacoce alata Aublet

* * * *

Done in Washington, DC, this 4th day of November 2010.

Kevin Shea,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–28346 Filed 11–9–10; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1208

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1704

RIN 2590–AA15

Debt Collection

AGENCY: Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing an interim final rule with request for comments on Debt Collection. The interim final rule sets forth procedures for use by FHFA in collecting debts owed to the Federal Government. Agencies are required by law to issue a regulation on their debt collection procedures. The interim final rule includes procedures for collection of debts through salary offset, administrative offset, tax refund offset, and administrative wage garnishment.

FHFA requests comments on the interim final rule.

DATES: The interim final rule is effective on November 10, 2010. FHFA will accept written comments on the interim final rule on or before January 10, 2011. For additional information, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments on the interim final rule, identified by regulatory information number (RIN) 2590–AA15, by any one of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail at RegComments@fhfa.gov. Please include “RIN 2590–AA15” in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AA15.

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA15, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA15, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Andra Grossman, Senior Counsel, telephone (202) 343–1313 or Gail F. Baum, Associate General Counsel, telephone (202) 343–1508 (not toll-free numbers); Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

The Federal Housing Finance Agency (FHFA) invites comments on all aspects of the interim final rule, and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted without change, including any personal information you provide, such as your