species of plant that may have been used to produce the plant product;
(2) If the species of plant used to produce the plant product that is the subject of the importation is commonly taken from more than one country, and the country from which the plant was taken and used to produce the plant product is unknown, the name of each country from which the plant may have been taken; and
(3) If a paper or paperboard plant product includes recycled plant product, the average percent recycled content without regard for the species or country of origin of the recycled plant product, in addition to the information for the non-recycled plant content otherwise required by this section.

(c) Guidance on completion and submission of the declaration form can be found on the APHIS website at http://www.aphis.usda.gov/plant_health/lacey_act. 
(Approved by the Office of Management and Budget under control number 0579-0349)
[85 FR 12212, Mar. 2, 2020]

§ 357.4 Exceptions from the declaration requirement.
Plants and products containing plant materials are excepted from the declaration requirement if:
(a) The plant is used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported; or
(b) The plant material in a product represents no more than 5 percent of the total weight of the individual product unit, provided that the total weight of the plant material in an entry of products in the same 10-digit provision of the Harmonized Tariff Schedule of the United States does not exceed 2.9 kilograms.

(c) A product will not be eligible for an exception under paragraph (b) of this section if it contains plant material listed:
(1) In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);
(2) As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or
(3) Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.
[85 FR 12212, Mar. 2, 2020]

PART 360—NOXIOUS WEED REGULATIONS

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§ 360.100 Definitions.

As used in this part, words in the singular form shall be deemed to import the plural and vice versa, as the case may require.

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.

Department. The U.S. 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 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.

Plant Protection and Quarantine Programs. The Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service of the Department.

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.

§ 360.200 Designation of noxious weeds.

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:

(a) Aquatic and wetland weeds:

- Azolla pinnata R. Brown (mosquito fern, water velvet)
- Caulerpa taxifolia (Vahl) C. Agardh, Mediterranean strain (killer algae)
- Eichhornia azurea (Swartz) Kunth
- Hydrilla verticillata (Linnaeus f.) Royle (hydrilla)
- Hygrophiila polysperma T. Anderson (Miramar weed)
- Ipomoea aquatica Forsskal (water-spinach, swamp morning-glory)
- Lagarosiphon major (Ridley) Moss
- Limnophila sessiliflora (Vahl) Blume (ambulia)
- Melaleuca quinquenervia (Cavanilles) S.T. Blake
- Monochoria hastata (Linnaeus) Solms-Laubach
- Monochoria vaginalis (Burman f.) C. Presl
- Ottelia alismoides (L.) Pers.
- Sagittaria sagittifolia Linnaeus (arrowhead)
- Salvinia auriculata Anblet (giant salvinia)
- Salvinia bidoba Raddi (giant salvinia)
- Salvinia herzogii de la Bota (giant salvinia)
- Salvinia molesta D.S. Mitchell (giant salvinia)
- Solanum tampicense Dunal (wetland nightshade)
- Sparganium erectum Linnaeus (exotic bur-reed)

(b) Parasitic weeds:

- Aeginetia spp.
- Alectra spp.
- Cuscuta spp. (dodders), other than following species:
  - Cuscuta americana Linnaeus
  - Cuscuta australis Engelmann
  - Cuscuta approximata Babington
  - Cuscuta attenuata Waterfall

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.
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(c) Terrestrial weeds:

- Cuscuta boldinghii Urban
- Cuscuta brachyclayz (Yuncker) Yuncker
- Cuscuta californica Hooker & Arnott
- Cuscuta campestris Yuncker
- Cuscuta eodontoidea Nees ex Engelmann
- Cuscuta ceanothisi Behr
- Cuscuta cephalanthi Engelmann
- Cuscuta compacta Jusleu
- Cuscuta eodontoidea Engelmann
- Cuscuta cuspidata Engelmann
- Cuscuta decipiens Yuncker
- Cuscuta dentataaquata Yuncker
- Cuscuta dentata Engelmann
- Cuscuta epilimum Weihe
- Cuscuta epithymum (Linnaeus) Linnaeus
- Cuscuta erosa Yuncker
- Cuscuta euvapora Linnaeus
- Cuscuta exallata Engelmann
- Cuscuta fasciculata Yuncker
- Cuscuta glabrior (Engelmann) Yuncker
- Cuscuta globosaensis Bentham
- Cuscuta glomerata Choisy
- Cuscuta gronovii Wildenow
- Cuscuta harperi Small
- Cuscuta hovelliana Rubtsoff
- Cuscuta indecora Choisy
- Cuscuta leptanthan Engelmann
- Cuscuta nitriformis Engelmann
- Cuscuta obtusiflora Kunth
- Cuscuta odontolepis Engelmann
- Cuscuta pentagona Engelmann
- Cuscuta planiflora Tenore
- Cuscuta platensis A. Nelson
- Cuscuta polygonoarum Engelmann
- Cuscuta rostrata Shuttleworth ex Engelmann & Gray
- Cuscuta rugonisi Yuncker
- Cuscuta salicaceae Engelmann
- Cuscuta sandwichiana Choisy
- Cuscuta squamata Engelmann
- Cuscuta suaveolens Seringe
- Cuscuta suksdorfii Yuncker
- Cuscuta tuberculata Brandegee
- Cuscuta umbellata Kunth
- Cuscuta umbrosa Bryrich ex Hooker
- Cuscuta veatchii Brandegee
- Cuscuta warneri Yuncker

Orobanche spp. (broomrises), other than the following species:

- Orobanche bulbosa (Gray) G. Beck
- Orobanche californica Schlchtendal & Chamisso
- Orobanche cooperi (Gray) Heller
- Orobanche corymbosa (Rydberg) Ferris
- Orobanche duisii (S. Watson) Manz
- Orobanche fasciculata Nuttall
- Orobanche ludoviciana Nuttall
- Orobanche multiflora Brandegee
- Orobanche parishii (Jepson) Heckard
- Orobanche pinorun Geyer ex Hooker
- Orobanche uniflora Linnaeus
- Orobanche valida Jepson
- Orobanche vallicola (Jepson) Heckard

Striga spp. (witchweeds)
§ 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)

§ 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. 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;


§ 360.304 Denial of an application for a permit to move a noxious weed; revocation 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; or

(6) The application for the permit contains information that is found to be materially false, fraudulent, or deceptive; or

(7) APHIS may deny a permit to a person who has previously failed to comply with any APHIS regulation.

(b) The Administrator may revoke 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 revoked, APHIS will provide the reasons for the withdrawal of the permit in writing within 10 days. Any person whose permit has been revoked 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 revocation or denial. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully revoked 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 revoked.

When a permit for the movement of a noxious weed is revoked 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 revoked 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 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 §319.37-9(c) of this chapter 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 §319.37-9(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 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.

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

(75 FR 68955, Nov. 10, 2010)

§ 360.600 Preemption of State and local laws.

(a) 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 noxious weed in order to control it, eradicate it, or prevent its dissemination. A State or political subdivision of a State also may not impose prohibitions or restrictions upon the movement in interstate commerce of noxious weeds if the Secretary has issued a regulation or order to prevent the dissemination of the noxious weed within the United States. The only exceptions to this are:

1. If the prohibitions or restrictions issued by the State or political subdivision of a State are consistent with and do not exceed the regulations or orders issued by the Secretary; or

2. If the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

(b) Therefore, in accordance with section 436 of the Plant Protection Act, the regulations in this part preemp all State and local laws and regulations that are inconsistent with or exceed the regulations in this part unless a special need request has been granted in accordance with the regulations in §§301.1 through 301.13 of this chapter.