

USA

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PART 360—NOXIOUS WEED REGULATIONS

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Title 7: Agriculture

PART 360—NOXIOUS WEED REGULATIONS

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

§ 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 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.

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.

[41 FR 49988, Nov. 12, 1976, as amended at 75 FR 68953, Nov. 102, 2010]

§ 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:

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.

(a) *Aquatic and wetland weeds:*

Azolla pinnata R. Brown (mosquito fern, water velvet)
Caulerpa taxifolia (Vahl) C. Agardh, Mediterranean strain (killer algae)
Eichornia azurea (Swartz) Kunth
Hydrilla verticillata (Linnaeus f.) Royle (hydrilla)
Hygrophila polysperma T. Anderson (Miramar weed)
Ipomoea aquatica Forsskal (water-spinach, swamp morning-glory)
Lagarosiphon major (Ridley) Moss
Limnophila sessiliflora (Vahl) Blume (ambulia)
Melaleuca quenquinervia (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 Aublet (giant salvinia)
Salvinia biloba Raddi (giant salvinia)
Salvinia herzogii de la Sota (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 applanata Engelmann
Cuscuta approximata Babington
Cuscuta attenuata Waterfall
Cuscuta boldinghii Urban
Cuscuta brachycalyx (Yuncker) Yuncker
Cuscuta californica Hooker & Arnott

Cuscuta campestris Yuncker
Cuscuta cassyoides Nees ex Engelmann
Cuscuta ceanothi Behr
Cuscuta cephalanthi Engelmann
Cuscuta compacta Jussieu
Cuscuta coryli Engelmann
Cuscuta cuspidata Engelmann
Cuscuta decipiens Yuncker
Cuscuta dentatasquamata Yuncker
Cuscuta denticulata Engelmann
Cuscuta epilinum Weihe
Cuscuta epithymum (Linnaeus) Linnaeus
Cuscuta erosa Yuncker
Cuscuta europaea Linnaeus
Cuscuta exaltata Engelmann
Cuscuta fasciculata Yuncker
Cuscuta glabrior (Engelmann) Yuncker
Cuscuta globulosa Bentham
Cuscuta glomerata Choisy
Cuscuta gronovii Willdenow
Cuscuta harperi Small
Cuscuta howelliana Rubtsoff
Cuscuta indecora Choisy
Cuscuta leptantha Engelmann
Cuscuta mitriformis Engelmann
Cuscuta obtusiflora Kunth
Cuscuta odontolepis Engelmann
Cuscuta pentagona Engelmann
Cuscuta planiflora Tenore
Cuscuta plattensis A. Nelson
Cuscuta polygonorum Engelmann
Cuscuta rostrata Shuttleworth ex Engelmann & Gray
Cuscuta runyonii Yuncker

Cuscuta salina Engelm.

Cuscuta sandwichiana Choisy

Cuscuta squamata Engelm.

Cuscuta suaveolens Seringe

Cuscuta suksdorfii Yuncker

Cuscuta tuberculata Brandegee

Cuscuta umbellata Kunth

Cuscuta umbrosa Beyrich ex Hooker

Cuscuta veatchii Brandegee

Cuscuta warneri Yuncker

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

Orobanche bulbosa (Gray) G. Beck

Orobanche californica Schlechtendal & Chamisso

Orobanche cooperi (Gray) Heller

Orobanche corymbosa (Rydberg) Ferris

Orobanche dugesii (S. Watson) Munz

Orobanche fasciculata Nuttall

Orobanche ludoviciana Nuttall

Orobanche multicaulis Brandegee

Orobanche parishii (Jepson) Heckard

Orobanche pinorum Geyer ex Hooker

Orobanche uniflora Linnaeus

Orobanche valida Jepson

Orobanche vallicola (Jepson) Heckard

Striga spp. (witchweeds)

(c) *Terrestrial weeds:*

Acacia nilotica (Linnaeus) Wildenow ex Delile (gum arabic tree, thorny acacia)

Ageratina adenophora (Sprengel) King & Robinson (crofton weed)

Ageratina riparia (Regel) R.M. King and H. Robinson (creeping croftonweed, mistflower)

Alternanthera sessilis (Linnaeus) R. Brown ex de Candolle (sessile joyweed)

Arctotheca calendula (Linnaeus) Levyns (capeweed)

Asphodelus fistulosus Linnaeus (onionweed)

Avena sterilis Linnaeus (including *Avena ludoviciana* Durieu) (animated oat, wild oat)

Carthamus oxyacantha M. Bieberstein (wild safflower)
Chrysopogon aciculatus (Retzius) Trinius (pilipiliula)
Commelina benghalensis Linnaeus (Benghal dayflower)
Crupina vulgaris Cassini (common crupina)
Digitaria abyssinica (Hochstetter ex A. Richard) Stapf (African couchgrass, fingergrass),
Digitaria scalarum (Schweinfurth) Chiovenda (African couchgrass, fingergrass)
Digitaria velutina Forsskal) Palisot de Beauvois (velvet fingergrass, annual couchgrass)
Drymaria arenariodes Humboldt & Bonpland ex J.A. Schultes lightning weed)
Emex australis Steinheil (three-cornered jack)
Emex spinosa (Linnaeus) Campdera (devil's thorn)
Euphorbia terracina Linnaeus (false caper, Geraldton carnation weed)
Galega officinalis Linnaeus (goatsrue)
Heracleum mantegazzianum Sommier & Levier (giant hogweed)
Homeria spp.
Imperata brasiliensis Trinius (Brazilian satintail)
Imperata cylindrica (Linnaeus) Palisot de Beauvois (cogongrass)
Inula britannica Linnaeus (British elecampane, British yellowhead)
Ischaemum rugosum Salisbury (muraingrass)
Leptochloa chinensis (Linnaeus) Nees (Asian sprangletop)
Lycium ferocissimum Miers (African boxthorn)
Melastoma malabathricum Linnaeus
Mikania cordata (Burman f.) B. L. Robinson (mile-a-minute)
Mikania micrantha Kunth
Mimosa diplotricha C. Wright (giant sensitive-plant)
Mimosa invisa Martius (giant sensitive plant)
Mimosa pigra Linnaeus var. *pigra* (catclaw mimosa)
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)
Nassella trichotoma (Nees) Hackel ex Arechavaleta (serrated tussock)
Onopordum acaulon Linnaeus (stemless thistle)

Onopordum illyricum Linnaeus (Illyrian thistle)
Opuntia aurantiaca Lindley (jointed prickly pear)
Oryza longistaminata A. Chevalier & Roehrich (red rice)
Oryza punctata Kotschy ex Steudel (red rice)
Oryza rufipogon Griffith (red rice)
Paspalum scrobiculatum Linnaeus (Kodo-millet)
Pennisetum clandestinum Hochstetter ex Chiovenda (kikuyugrass)
Pennisetum macrourum Trinius (African feathergrass)
Pennisetum pedicellatum Trinius (kyasumagrass)
Pennisetum polystachion (Linnaeus) Schultes (missiongrass, thin napiergrass)
Prosopis alata R. A. Philippi
Prosopis argentina Burkart
Prosopis articulata S. Watson
Prosopis burkartii Munoz
Prosopis caldenia Burkart
Prosopis calingastana Burkart
Prosopis campestris Grisebach
Prosopis castellanosi Burkart
Prosopis denudans Benth
Prosopis elata (Burkart) Burkart
Prosopis farcta (Banks & Solander) J.F. Macbride
Prosopis ferox Grisebach
Prosopis fiebrigii Harms
Prosopis hassleri Harms
Prosopis humilis Gillies ex Hooker & Arnott
Prosopis kuntzei Harms
Prosopis pallida (Humboldt & Bonpland ex Willdenow) Kunth
Prosopis palmeri S. Watson
Prosopis reptans Benth var. *reptans*
Prosopis rojasiana Burkart
Prosopis ruizlealii Burkart
Prosopis ruscifolia Grisebach
Prosopis sericantha Gillies ex Hooker & Arnott

Prosopis strombulifera (Lamarck) Bentham
Prosopis torquata (Cavanilles ex Lagasca y Segura) de Candolle
Rottboellia cochinchinensis (Lour.) W. Clayton
Rubus fruticosus Linnaeus (complex) (wild blackberry)
Rubus moluccanus Linnaeus (wild raspberry)
Saccharum spontaneum Linnaeus (wild sugarcane)
Salsola vermiculata Linnaeus (wormleaf salsola)
Senecio inaequidens DC. (South African ragwort)
Senecio madagascariensis Poir. (Madagascar ragwort)
Setaria pumila (Poir.) Roem. & Schult. subsp. *pallidifusca* (Schumach.) B.K. Simon (cattail grass)
Solanum torvum Swartz (turkeyberry)
Solanum viarum Dunal (tropical soda apple)
Spermacoce alata Aublet
Tridax procumbens Linnaeus (coat buttons)
Urochloa panicoides Beauvois (liverseed grass)

[48 FR 20039, May 4, 1983, as amended at 49 FR 25223, June 20, 1984; 57 FR 8838, Mar. 13, 1992; 60 FR 35832, July 12, 1995; 64 FR 12883, Mar. 16, 1999; 65 FR 33743, May 25, 2000; 66 FR 21060, Apr. 27, 2001; 71 FR 35381, June 20, 2006; 74 FR 53400, Oct. 19, 2009; 75 FR 68953, Nov. 10, 2010]

§ 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 Sec. 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)

[75 FR 68954, Nov. 10, 2010]

§ 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:

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.

- (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:

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.

- (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.

[75 FR 68954, Nov. 10, 2010]

§ 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.

[75 FR 68954, Nov. 10, 2010]

§ 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.

[75 FR 68954, Nov. 10, 2010]

§ 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.

[75 FR 68954, Nov. 10,2010; 79 FR 19812, April 10, 2014]

§ 360.305 Disposal of noxious weeds when permits are revoked.

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.

[75 FR 68954, Nov. 10, 2010; 79 FR 19812, April 10, 2014]

§ 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.

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

(b) [Reserved]

[75 FR 68955, Nov. 10, 2010]

§ 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.

[75 FR 68955, Nov. 10, 2010]

§ 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.

[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 preempt 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.

[74 FR 53400, Oct. 19, 2009. Redesignated at 75 FR 68955, Nov. 10, 2010]

