



GUIDE TO THE APHIS DELISTING PROCESS FOR FEDERAL NOXIOUS WEEDS

The Six Steps

1. Identify a Federal noxious weed that may no longer meet the Plant Protection Act (PPA) authority for applying remedial measures
2. Prepare a risk assessment
3. Prepare an environmental assessment if warranted
4. Publish a proposed rule in the Federal Register
5. Analyze and respond to public comments
6. Publish a final rule in the Federal Register

Discussion of Each Step

1. Identify a weed that may no longer meet the PPA authority for applying remedial measures.

The PPA definition of a noxious weed is broad: “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.”

APHIS lists in the noxious weed regulations only those taxa that qualify as quarantine pests under the definition of that term in the International Plant Protection Convention (IPPC) Glossary of Phytosanitary Terms, i.e., “a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.” This practice is consistent with the IPPC, to which the United States is a signatory. This practice is also consistent with sections 414 and 415 of the PPA, which authorize the Secretary to take general remedial measures, or to declare an extraordinary emergency if necessary, to prevent the introduction or spread of plant pests or noxious weeds that are new to or not known to be prevalent or distributed widely within and throughout the United States.

All Federal noxious weeds were determined at the time of their listing to pose economic and/or environmental risks to the United States. However, a Federal noxious weed may be targeted for delisting if it no longer meets the definition of a quarantine pest, which is consistent with the PPA authority under section 414 for applying remedial measures.

Anyone may petition the Secretary of Agriculture to remove a weed from the regulations. Minimally, a petition to remove a weed from the list of quarantine pests should provide one or more of the following, preferably in electronic format:

- 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 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 and/or inability to cross pollinate with introduced wild types, which then might produce seed of weedier biotypes, and few if any potential negative impacts on the economy and/or environment of the United States.
- d. A list of supporting references.

2. Prepare a risk assessment

APHIS staff members prepare risk assessments each year as other priorities allow. Because resources for weed risk assessment within APHIS are limited, we encourage stakeholders to submit draft risk assessments for review.

If an organism does not meet the PPA authority under section 414 of the PPA for APHIS to apply remedial measures; i.e., the organism is not “new to or not known to be widely prevalent or distributed within and throughout the United States,” then the assessment stops and the plant is eligible for a proposal to delist it. If assessment continues, we consider a plant to be eligible for delisting if the outcome is a pest risk potential lower than medium/high.

3. Prepare an environmental assessment

If delisting a weed may have environmental impacts, APHIS prepares an environmental assessment (EA) in accordance with the National Environmental Policy Act. (We do not prepare an EA when we propose delisting a weed due to a taxonomic reclassification determining the weed taxon is synonymous with a native species.) We publish a notice of availability of the EA in the Federal Register, receive and analyze public comments, and decide whether or not to proceed with a proposed rule.

4. Publish a proposed rule in the Federal Register

Because Federal noxious weeds are listed in the regulations in Title 7 of the Code of Federal Regulations (CFR) parts 360 and 361, deleting a weed from the list requires a change to the regulations under mechanisms laid out in the Administrative Procedures Act (APA). The APA governs the way in which administrative agencies of the United States federal government may propose and establish or modify regulations. A weed program staff member prepares a work request, called a regulatory work plan, for a proposed rule to be published in the Federal Register for public comment. The regulatory work plan is submitted to a staff in APHIS that provides regulatory drafting services – the Regulatory Analysis and Development (RAD) staff. The RAD staff forwards the regulatory work plan for clearance through policy officials in USDA and assigns a writer

to draft the proposed rule. The Office of Management and Budget (OMB) classifies the action under Executive Order 12866, Regulatory Planning and Review. OMB may waive review of an action or will designate the action “not significant” or “significant.” Any action designated “significant” must be reviewed by the OMB before it can be published in the Federal Register. In addition to drafting the proposed rule, APHIS must complete various analyses required by laws and Presidential executive orders to support the proposed rule. These include an analysis of the potential economic effects of the rule on small entities.

The proposed rule and its accompanying analyses must undergo legal and policy reviews. The Office of General Counsel (OGC) reviews for legal sufficiency. If the proposed rule has been designated “significant” by OMB, the proposed rule must be cleared by a number of USDA offices outside APHIS and then by OMB. If OMB waived review or designated the proposed rule “not significant,” there is minimal USDA review beyond APHIS, and the proposed rule is not reviewed by OMB.

Once all reviews are completed, the proposed rule is signed and sent to the Federal Register. The public is invited to comment, usually for 60 days. During this time, the World Trade Organization is notified about the proposed action.

5. Analyze and respond to public comments

After the comment period ends, we review all comments received. We identify each issue raised and decide how to respond. We do not respond directly to each commenter. Rather, we respond to issues raised by the commenters in the introduction (or Supplementary Information section) of the final rule. We must explain why we agree or disagree with the comment and what, if any, change we are making in the final rule as a result. Note: We can also decide to withdraw a proposed rule at this stage. If so, we will publish a Notice of Withdrawal in the Federal Register.

6. Publish the final rule

Review and clearance procedures for a final rule are similar to those for a proposed rule. This includes submitting a document to OMB, based on which OMB may waive review of the final rule or will designate it “not significant” or “significant.” The final rule is drafted. The analyses prepared for the proposed rule are updated and adjusted if necessary. Final rules must also be reviewed by OGC for legal sufficiency and by APHIS and USDA policy officials and, if “significant,” by OMB. Once all reviews are completed, the final rule is signed and sent to the Federal Register. The published rule includes an effective date.