

Proposed Rules

Federal Register

Vol. 60, No. 56

Thursday, March 23, 1995

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 201

[Docket No. 93-126-2]

Imported Seed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We are proposing to expand the list of noxious weed seeds contained in Federal Seed Act regulations to include seeds of all of the weeds listed in the Federal Noxious Weed Act regulations. This rule would allow APHIS to prohibit the entry into the United States of any imported agricultural or vegetable seed shipments containing seeds of noxious weeds listed in the Federal Noxious Weed Act regulations. We believe this action is necessary to prevent the introduction of noxious weeds into the United States.

DATES: Consideration will be given only to comments received on or before April 24, 1995. We also will consider comments made at a public hearing to be held on April 4, 1995, from 9 a.m. until 12 noon.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93-126-2, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737-1228. Please state that your comments refer to Docket No. 93-126-2.

Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room. The public hearing will be held on April

4, 1995, in room 3A01, 4700 River Road, Riverdale, MD 20737-1228.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Biological Assessments And Taxonomic Support, 4700 River Road Unit 133, Riverdale, MD 20737-1228, (301) 734-8896.

SUPPLEMENTARY INFORMATION:

Background

In 1939, Congress enacted the Federal Seed Act (FSA), directing the U.S. Department of Agriculture (USDA), among other things, to regulate foreign commerce in seeds in cooperation with the U.S. Department of Treasury. 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 certain noxious weeds as a condition of entry into the United States. On October 1, 1982, the Agricultural Marketing Service (AMS) of the USDA transferred authority for issuing and enforcing regulations under Title III of the FSA (7 CFR 201.39 through 201.47b, 201.66, and 201.101 through 201.230) to the Animal and Plant Health Inspection Service (APHIS).

On September 15, 1994, we published an advance notice of proposed rulemaking in the **Federal Register** (59 FR 47286-47287, Docket No. 93-126-1) announcing our plans to revise the FSA regulations to reflect amendments to the FSA, developments in the seed industry, and the transfer of regulatory authority for Title III of the FSA from AMS to APHIS. We also noted our intention to revise the list of noxious weed seeds contained in the regulations promulgated under the FSA to include seeds of all the noxious weeds listed in the regulations promulgated under the Federal Noxious Weed Act.

We have decided to proceed separately with this proposal to revise the list of noxious weeds contained in the regulations, for reasons explained below. We are still reviewing comments concerning the other issues raised in the advance notice, and plan to publish another proposed rule at a later date. We also will hold a public hearing in connection with that proposed rule.

We solicited comments on the advance notice of proposed rulemaking for 45 days ending October 31, 1994. By

that date we received 13 comments from seed companies and importers, State governments, and universities. Four of those comments remarked on our plan to revise the list of noxious weed seeds contained in the FSA regulations to include seeds of all the noxious weeds listed in the Federal Noxious Weed Act regulations. Two of these comments supported our actions and two raised relevant questions. These questions are addressed below.

Under § 201.108 of the FSA regulations, seeds of 11 types of weeds are considered to be noxious when found in shipments of imported agricultural or vegetable seeds. If seeds of these weeds are found in a shipment of imported agricultural or vegetable seeds in amounts greater than the tolerances listed in § 201.66, APHIS prohibits the entry of that shipment into the United States (except possibly for supervised cleaning or repackaging for re-export). However, if seeds of noxious weeds listed in the Federal Noxious Weed Act regulations are found in a shipment of imported agricultural or vegetable seeds subject to the FSA regulations, APHIS currently may not prohibit the entry of that shipment into the United States based on such contamination. The Federal Noxious Weed Act (7 U.S.C. 2801-2813) specifically provides that it does not apply to shipments of seed subject to the FSA. Shipments of agricultural and vegetable seeds are subject to the FSA.

This prohibition increases the chances that noxious weeds listed in the Federal Noxious Weed Act regulations, but not in the FSA regulations, may be introduced into the United States from contaminated shipments of agricultural or vegetable seeds. In fact, since 1988, APHIS has found noxious weeds listed in the Federal Noxious Weed Act regulations in two shipments of imported agricultural and vegetable seed. In 1988, APHIS discovered seed of the noxious weed serrated tussock (*Nassella trichotoma* (Nees) Hackel ex Arechavaleta) in a shipment of lawn grass seed imported from Argentina. More recently, in September of 1994, APHIS discovered seed of the noxious weed goatsrue (*Galega officinalis* L.) in a shipment of carrot seed imported from Chile.

We are proposing, therefore, to expand the list of noxious weed seeds contained in the FSA regulations to

include seeds of all of the noxious weeds listed in the Federal Noxious Weed Act regulations. As a result of this action, APHIS would have the authority to prohibit the entry of shipments of imported agricultural and vegetable seed containing seed of the noxious weeds currently listed in the Federal Noxious Weed Act regulations. We have decided to proceed with this proposal separately from other issues identified in the advance notice of proposed rulemaking mentioned above due to the urgent need to expand APHIS authority in this matter, as underscored by the recent detection of seed of the noxious weed goatsrue in imported carrot seed.

Tolerances

Under § 201.66 of the FSA regulations, agricultural or vegetable seed imports may enter the United States if they contain only small amounts, or "tolerances," of the noxious weed seeds specified in § 201.108. We propose to preserve these tolerances for the weed seeds currently listed in § 201.108, except for species of *Cuscuta*. Currently, all species of *Cuscuta* are listed in § 201.108 (with tolerances) and several are also listed in the Federal Noxious Weed Act regulations (without tolerances). Since many seeds of *Cuscuta* species plants are indistinguishable from each other, we are proposing to retain tolerances for none. Thus, we would reduce the risk that *Cuscuta* species classified as noxious weeds under the Federal Noxious Weed Act regulations would enter the United States in agricultural or vegetable seeds. Also, we are proposing to establish no tolerances for the other noxious weed seeds that are to be added to the FSA regulations from the Federal Noxious Weed Act regulations. There are no tolerances for these weeds under the Federal Noxious Weed Act regulations.

Also, we are proposing to add a new § 201.108(b). This paragraph would state that the allowable tolerance for certain noxious weed seeds in import shipments of agricultural and vegetable seeds would be two weed seeds in the minimum amount of seed required to be examined. Shipments containing three or more noxious weed seeds may not be imported into the United States. If two noxious weed seeds are found during the initial examination, a second sample will be taken and examined. If two or fewer noxious weed seeds are found in the second examination, the shipment from which the seeds were drawn may be imported into the United States. If three or more noxious weed seeds are found in the second examination, the

shipment may not be imported into the United States.

Miscellaneous

We are proposing to revise the list of noxious weed seeds in the FSA regulations by updating the taxonomical names of several of the weeds listed. Specifically, concerning the three species of whitetop or hoary cress currently listed in the regulations, *Lepidium draba* (L.) and *Lepidium repens* (Schrenk) Boiss. would be redesignated as *Cardaria draba* (L.) Desv., and *Hymenophyssa pubescens* C. A. Mey. would be redesignated as *Cardaria pubescens* (C. A. Mey.) Jarmol. These changes will bring the list of noxious weed seeds under the FSA regulations into accord with current botanical nomenclature. These changes would not affect the Federal Noxious Weed Act regulations, as these seeds are not listed under those regulations.

Comments on the Advance Notice of Proposed Rulemaking

As stated above, of the 13 comments we received on the advance notice of proposed rulemaking, four remarked on our plan to revise the list of noxious weeds in the FSA regulations. Two of the comments supported our plan. The other two raised the following questions.

One comment, from a State government, inquired as to whether APHIS would consider adding seeds of weeds appearing on State noxious weed lists to the list of noxious weeds in the FSA regulations. We would consider adding a weed to the noxious weed list in the FSA regulations (as well as the noxious weed list in the Federal Noxious Weed Act regulations) upon receipt and review of information regarding that weed.

The other comment, from a trade association, encouraged APHIS to undertake a thorough scientific review of the list of noxious weeds in the FSA regulations to confirm its scientific basis and applicability to today's trade. We welcome for review any information indicating a need to revise the list of noxious weeds in the FSA regulations (or the Federal Noxious Weed Act regulations).

Public Hearing

As required by 7 U.S.C. 1592(c), APHIS will host a public hearing to provide interested persons a full opportunity to present their views regarding this proposal. At this public hearing, we will also consider comments on a proposed rule to amend the Federal Noxious Weed Act regulations. (See APHIS Docket No. 94-

050-1, published in the Proposed Rules Section of this issue of the **Federal Register**). The hearing will be held on April 4, 1995, in room 3A01, 4700 River Road, Riverdale, MD 20737-1228.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be asked to sign in, listing their names and organizations.

The public hearing will begin at 9 a.m. local time and is scheduled to end at 12 noon local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the proposed rules may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearing, except to clarify or explain provisions of the proposed rules.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to expand the list of noxious weed seeds contained in FSA regulations by including the seeds of all weeds listed in Federal Noxious Weed Act regulations. Currently APHIS can prohibit the entry of shipments of imported agricultural or vegetable seeds contaminated with noxious weed seeds listed in the FSA regulations, but not shipments which contain weed seeds listed only in the Federal Noxious Weed Act regulations. The change would authorize APHIS to prohibit the entry of any agricultural or vegetable seed shipments containing noxious weed seeds listed in the Federal Noxious Weed Act regulations.

The weeds already established in the United States pose serious threats to the U.S. supplies of food and fiber, causing losses in both yield and quality of crops. As a result of increased weed

competition, yields decline, production decreases, exports decrease, and prices of commodities increase. Weed management has a major influence on the production decisions made by agricultural producers. The use of additional land, livestock, labor, equipment and fuel, herbicides, insecticides and fungicides, fertilizers, and irrigation water may all be required in order to maintain economical commodity production when weeds are present.

Between 1989 and 1991, weeds in crops and forage cost producers using herbicides about \$4.1 billion annually and cost producers unable to use herbicides about \$19.6 billion annually. (These estimates represent the upper limits of costs related to weeds.) Although such losses varied between crops and regions, we estimate yield reduction to have been between 10 and 20 percent. Furthermore, certain weeds in pasture lands not only reduce production and availability but also poison livestock. Livestock losses related to weeds are estimated at about 3 to 5 percent annually.

Many of the nonindigenous weed species listed in the Federal Noxious Weed Act regulations attack important farm crops in their native lands. Among farm products attacked by such weeds are corn, wheat, sorghum, tobacco, tomatoes, sugarcane, potatoes, grapes, sunflowers, rice, carrots, and pasture grasses. These crops generate an annual income of approximately \$50 billion in the United States. Additionally, these agricultural commodities account for about an estimated \$19 billion in U.S. exports. Therefore, even if yield losses related to new weeds were much less than the average loss related to established weeds (10 to 20 percent), the economic impact related to their introduction would be substantial.

Very few agricultural and vegetable seed shipments have been found to be contaminated with seeds of weeds listed in the Federal Noxious Weed Act regulations. The recent interception of goatsrue seeds in a carrot seed shipment from Chile was the first case of a noxious weed listed in the Federal Noxious Weed Act regulations, but not under the FSA regulations, being found in an agricultural or vegetable seed shipment since serrated tussock seed was found in a lawn grass seed shipment 6 years ago.

Goatsrue is a perennial weed that competes with and reduces yields of forage plants in moist or irrigated pastures, grassland, marshy areas, river banks, and along roadsides. The cost of eradicating goatsrue already introduced has been substantial to the agency.

Since the eradication program began in 1981, the agency has appropriated about \$1.7 million to the ongoing effort.

Although we could not prohibit the entry of the imported carrot seed based on its contamination with goatsrue seed, the importer agreed not to distribute the seed in the United States. However, had we had the authority to prohibit the entry of the shipment based on its contamination with goatsrue, and had the importer subsequently destroyed the contaminated seed, we estimate he would have incurred a loss of about \$24,000. This sort of loss is insubstantial compared with the potential agricultural costs and production losses that could result from the introduction of a noxious weed.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 201

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

Accordingly, 7 CFR part 201 would be amended as follows:

PART 201—FEDERAL SEED ACT REGULATIONS

1. The authority citation for part 201 would continue to read as follows:

Authority: 7 U.S.C. 1592.

§ 201.66 [Removed and reserved]

2. Section 201.66 would be removed and reserved.

3. Section 201.108 would be revised to read as follows:

§ 201.108 Noxious weed seeds.

(a) Seeds of the following plants shall be considered noxious weed seeds.

¹ *Acroptilon repens* (L.) DC. (= *Centaurea repens* L.) (= *Centaurea picris*)
Aeginetia spp.
Ageratina adenophora (Sprengel) King & Robinson
Alectra spp.
Alternanthera sessilis (L.) R. Brown ex de Candolle
Asphodelus fistulosus L.
Avena sterilis L. (including *Avena ludoviciana* Durieu)
Azolla pinnata R. Brown
Borreria alata (Aublet) de Candolle
¹ *Cardaria draba* (L.) Desv.
¹ *Cardaria pubescens* (C. A. Mey.) Jarmol.
Carthamus oxycantha M. Bieberstein
¹ *Convolvulus arvensis* L.
Chrysopogon aciculatus (Retzius) Trinius
¹ *Cirsium arvense* (L.) Scop.
Commelina benghalensis L.
Crupina vulgaris Cassini
Cuscuta spp.
Digitaria abyssinica (= *D. scalarum*)
Digitaria velutina (Forsskal) Palisot de Beauvois
Drymaria arenarioides Humboldt & Bonpland ex Roemer & Schultes
Eichhornia azurea (Swartz) Kunth
¹ *Elytrigia repens* (L.) Desv. (= *Agropyron repens* (L.) Beauv.)
Emex australis Steinheil
Emex spinosa (L.) Campdera
¹ *Euphorbia esula* L.
Galega officinalis L.
Heraclium mantegazzianum Sommier & Levier
Hydrilla verticillata (Linnaeus f.) Royle
Hygrophila polysperma T. Anderson
Imperata brasiliensis Trinius
Imperata cylindrica (L.) Rauschel
Ipomoea aquatica Forsskal
Ipomoea triloba L.
Ischaemum rugosum Salisbury
Lagarosiphon major (Ridley) Moss
Leptochloa chinensis (L.) Nees
Limnophila sessiliflora (Vahl) Blume
Lycium ferocissimum Miers
Melaleuca quinquenervia (Cav.) Blake
Melastoma malabathricum L.
Mikania cordata (Burman f.) B. L. Robinson
Mikania micrantha Humboldt, Bonpland, & Kunth
Mimosa invisa Martius
Mimosa pigra L. var. *pigra*
Monochoria hastata (L.) Solms-Laubach
Monochoria vaginalis (Burman f.) C. Presl
Nassella trichotoma (Nees) Hackel ex Arechavaleta
Opuntia aurantiaca Lindley
Orobanche spp.
Oryza longistaminata A. Chevalier & Roehrich
Oryza punctata Kotschy ex Steudel
Oryza rufipogon Griffith
Ottelia alismoides (L.) Pers.
Paspalum scrobiculatum L.
Pennisetum clandestinum Hochstetter ex Chiavenda
Pennisetum macrourum Trinius
Pennisetum pedicellatum Trinius
Pennisetum polystachion (L.) Schultes
Prosopis alapataco R. A. Philippi
Prosopis argentina Burkart
Prosopis articulata S. Watson
Prosopis burkartii Munoz
Prosopis caldenia Burkart

Prosopis calingastana Burkart
Prosopis campestris Grisebach
Prosopis castellanosii Burkart
Prosopis denudans Benth
Prosopis elata (Burkart) Burkart
Prosopis farcta (Solander ex Russell) 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) Humboldt, Bonpland, & 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) Benth
Prosopis torquata (Cavanilles ex Lagasca y Segura) de Candolle
Rottboellia cochinchinensis (Lour.) Clayton (= *R. exaltata* (L.) L. f.)
Rubus fruticosus L. (complex)
Rubus moluccanus L.
Saccharum spontaneum L.
Sagittaria sagittifolia L.
Salsola vermiculata L.
Salvinia auriculata Aublet
Salvinia biloba Raddi
Salvinia herzogii de la Sota
Salvinia molesta D.S. Mitchell
Setaria pallide-fusca (Schumacher) Stapf & Hubbard
Solanum torvum Swartz
Solanum viarum Dunal
¹ *Sonchus arvensis* L.
¹ *Sorghum halepense* (L.) Pers.
Sparganium erectum L.
Striga spp.
Tridax procumbens L.
Urochloa panicoides Beauvois

¹ Seeds with tolerances applicable to their prohibition.

(b) The tolerance applicable to the prohibition of the noxious weed seeds marked above with (1) shall be two seeds in the minimum amount required to be examined as shown in Table 1, § 201.46. If fewer than two seeds are found in an initial examination, the shipment from which the sample was drawn may be imported. If two seeds are found in an initial examination, a second sample must be examined. If two or fewer seeds are found in the second examination, the shipment from which the samples were drawn may be imported. If three or more seeds are found in the second examination, the shipment from which the samples were drawn may not be imported. If three or more seeds are found in an initial examination, the shipment from which the sample was drawn may not be imported.

Done in Washington, DC, this 15th day of March 1995.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-7133 Filed 3-22-95; 8:45 am]

BILLING CODE 3410-34-P

7 CFR Part 360

[Docket No. 94-050-1]

Noxious Weeds; Deletions and Additions to List

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We are proposing to amend the noxious weed regulations by removing *Stratiotes aloides* Linnaeus (water-aloë) from the list of aquatic weeds and *Euphorbia prunifolia* Jacquin (painted euphorbia) from the list of terrestrial weeds. We are also proposing to amend the noxious weed regulations by adding *Ottelia alismoides* (L.) Pers. to the list of aquatic weeds and *Solanum viarum* Dunal (tropical soda apple) to the list of terrestrial weeds. Listed noxious weeds may be moved into or through the United States only under a written permit and under conditions that would not involve a danger of dissemination of the weeds. This action appears to be necessary to prevent the artificial spread of noxious weeds into noninfested areas of the United States, and to remove unnecessary restrictions. **DATES:** Consideration will be given only to comments received on or before April 24, 1995. We also will consider comments made at a public hearing to be held on April 4, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94-050-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20727-1238. Please state that your comments refer to Docket No. 94-050-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room. The public hearing will be held in room 3A01, 4700 River Road, Riverdale, MD 20737-1228.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lethonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, Suite 4A03, 4700 River Road Unit 113, Riverdale, MD 20737-1236, (301) 734-8896.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations (referred to below as the regulations)

were promulgated under authority of the Federal Noxious Weed Act of 1974 (7 U.S.C. 2801 et seq., referred to below as the Act) and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States, but do not affect the movement of listed noxious weeds that are moved solely intrastate.

A listed noxious weed may be moved into or through the United States only pursuant to a written permit. The regulations provide that APHIS will issue a written permit only after determining that the importation and movement of the noxious weed would not involve a danger of dissemination of the noxious weed in the United States.

Section 360.200 of the regulations lists these categories of noxious weeds: aquatic (§ 360.200(a)), parasitic (§ 360.200(b)), and terrestrial (§ 360.200(c)). This document proposes to delete *Stratiotes aloides* Linnaeus (water-aloë) from the list of aquatic weeds and *Euphorbia prunifolia* Jacquin (painted euphorbia) from the list of terrestrial weeds. This document also proposes to add *Ottelia alismoides* (L.) Pers. to the list of aquatic weeds and *Solanum viarum* Dunal (tropical soda apple) to the list of terrestrial weeds.

The Act (7 U.S.C. 2802(c)) defines a noxious weed as "any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish or wildlife resources of the United States or the public health."

First reported in Florida in 1988, *Solanum viarum* Dunal (tropical soda apple) has spread rapidly in Florida and appears to be a noxious weed, as defined in the Act. It is of foreign origin, not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or other interests of agriculture. Tropical soda apple poses a significant threat to the cattle industry, agricultural areas, and natural ecosystems of the southern United States. The Weed Science Society of America and the National Association of Exotic Plant Pest Councils support the listing of tropical soda apple under the Federal Noxious Weed Act, as does the pest risk assessment completed by the Animal and Plant Health Inspection