

Rules and Regulations

Federal Register

Vol. 60, No. 133

Wednesday, July 12, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 201

[Docket No. 93-126-3]

Imported Seed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Federal Seed Act regulations by expanding the list of noxious weed seeds to include seeds of all of the weeds listed in the Federal Noxious Weed Act regulations. This rule will allow APHIS to prohibit the entry into the United States of any imported agricultural or vegetable seed shipment containing seeds of any noxious weed listed in the Federal Noxious Weed Act regulations. This action is necessary to prevent the introduction of noxious weeds into the United States.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236, (301) 734-8896.

SUPPLEMENTARY INFORMATION:

Background

In 1939, Congress enacted the Federal Seed Act (FSA), directing the U.S. Department of Agriculture (USDA) to, among other things, regulate foreign commerce in seeds in cooperation with the U.S. Department of the 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 the seeds of certain noxious weeds as a condition of

entry into the United States. Since October 1, 1982, the Animal and Plant Health Inspection Service (APHIS) has had 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); that authority had been held by the USDA's Agricultural Marketing Service prior to October 1982.

On March 23, 1995, we published in the **Federal Register** (60 FR 15257-15260, Docket No. 93-126-2) a proposal to amend the FSA regulations by: (1) Expanding the list of noxious weed seeds to include seeds of all of the weeds listed in the Federal Noxious Weed Act (FNWA) regulations; (2) modifying existing tolerances for certain weed seeds in imported shipments of agricultural and vegetable seeds; and (3) updating the taxonomic names of several weeds listed in the FSA regulations. We also announced that we would be hosting a public hearing on April 4, 1995, to provide interested persons with an opportunity to present their views regarding the proposed rule.

We solicited comments concerning our proposal for 30 days ending April 24, 1995. We received five comments by that date. The April 4, 1995, hearing was held as scheduled, but no members of the public attended to present comments. The five written comments we received were from four State agriculture agencies and a university. Four commenters fully supported the proposed rule. The fifth commenter also supported our proposal to expand the list of noxious weed seeds in the FSA regulations to include seeds of all of the weeds listed in the FNWA regulations, but he questioned whether two particular plants should be included in the list of weeds in the FNWA regulations and, consequently, on the list of noxious weed seeds in the FSA regulations. We have included a discussion of the commenter's position regarding the two plants and APHIS' response in a companion final rule, "Noxious Weeds; Deletions and Additions to List," APHIS Docket No. 94-050-2, published elsewhere in the Rules and Regulations section of this issue of the **Federal Register**. We have, however, made no change in this final rule based on that comment because no change was made to the list of noxious weeds in the FNWA regulations.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are expanding the list of noxious weed seeds contained in FSA regulations by including the seeds of all weeds listed in FNWA regulations. The rule will allow APHIS to prohibit the entry of any agricultural or vegetable seed shipments containing noxious weed seeds listed in the FNWA 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 FNWA 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. Those crops generate an annual income of approximately \$50 billion in the United States and 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 FNWA 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 FNWA 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, riverbanks, and along roadsides. The cost of eradicating goatsrue already introduced has been substantial to APHIS; since the eradication program began in 1981, APHIS 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 that the importer would have incurred a loss of about \$24,000. That 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 will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, 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 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 is amended as follows:

PART 201—FEDERAL SEED ACT REGULATIONS

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

Authority: 7 U.S.C. 1592.

§ 201.66 [Removed and reserved]

2. Section 201.66 is removed and reserved.

3. Section 201.105 is revised to read as follows:

§ 201.105 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 (Aubl.) de Candolle
¹ *Cardaria draba* (L.) Desv.
¹ *Cardaria pubescens* (C. A. Mey.) Jarmol.
Carthamus oxycantha M. Bieberstein
Chrysopogon aciculatus (Retzius) Trinius
¹ *Cirsium arvense* (L.) Scop.
Commelina benghalensis L.
¹ *Convolvulus arvensis* 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.
Heracleum mantegazzianum Sommier & Levier
Hydrilla verticillata (Linnaeus f.) Royle
Hygrophila polysperma T. Anderson
Imperata brasiliensis Trinius
Imperata cylindrica (L.) Raeuschel
Ipomoea aquatica Forsskal
Ipomoea triloba L.

Ischaemum rugosum Salisbury
Lagarosiphon major (Ridley) Moss
Leptochloa chinensis (L.) Nees
Limnophila sessiliflora (Vahl) Blume
Lycium ferocissimum Miess
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
Orobancha 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 Chiovenda
Pennisetum macrourum Trinius
Pennisetum pedicellatum Trinius
Pennisetum polystachion (L.) Schultes
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 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 ruscolifolia 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 introduction.

(b) The tolerance applicable to the prohibition of the noxious weed seeds in paragraph (a) of this section marked 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 3rd day of July 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-17017 Filed 7-11-95; 8:45 am]

BILLING CODE 3410-34-P

7 CFR Part 360

[Docket No. 94-050-2]

Noxious Weeds; Deletions and Additions to List

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending 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 amending 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 is necessary to prevent the artificial spread of noxious weeds into noninfested areas of the United States, and to remove unnecessary restrictions.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, Suite 4A03, 4700 River Road Unit 113, Riverdale, MD 20737-1236, (301) 734-4394.

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 the Animal and Plant Health Inspection Service (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.

On March 23, 1995, we published in the **Federal Register** (60 FR 15260-15262, Docket No. 94-050-1) a proposal to amend § 360.200 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 also proposed 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.

We held a public hearing on the proposed rule on April 4, 1995. No one came to speak about the proposed rule. We also solicited written comments concerning our proposal for 30 days ending April 24, 1995. We received five comments by that date. They were from industry groups and representatives of State and Federal governments. We carefully considered all of the comments we received. They are discussed below.

All of the comments that we received were strongly in favor of adding tropical soda apple to the list of terrestrial weeds. Two commenters talked about how surveys conducted in Florida indicated that the original infestation of this noxious weed has spread dramatically and now poses a significant threat to other southern States. This noxious weed has spread

through more than 500,000 acres of pasture and other land in Florida.

One commenter requested that APHIS consider setting aside funds to foster Federal and State cooperative efforts in keeping with APHIS' mission of excluding exotic plant pest species and enhancing trade opportunities for States threatened by tropical soda apple.

As resources permit, APHIS will continue to work closely with the weed research community, cooperators, and other interested parties to develop appropriate tropical soda apple control methods.

One commenter was concerned that APHIS did not propose measures to ensure the cleanliness of interstate shipments of cattle, manure, or grass seed.

At this time, available research on tropical soda apple is limited and inconclusive. Several efforts, such as ecological range studies and determining natural and artificial means of spread, are underway to determine the network of artificial and natural spread, but are not yet completed. One of the main vectors responsible for the artificial spread of tropical soda apple is cattle. APHIS, with the cooperation of the Florida State Veterinarian, has examined copies of all the certificates that accompanied the cattle moved interstate from Florida during the past 2 years. These records revealed the points of destination for the cattle shipments from Florida. These points of destination are considered by APHIS to be at high risk for becoming infested with tropical soda apple. These areas are being closely monitored by both APHIS and the States. Any tropical soda apple plants found will be destroyed. APHIS is aware of other avenues of artificial spread and is also monitoring those areas at risk in lieu of establishing quarantines.

Only one commenter was opposed to one of the additions to the list of noxious weeds. This commenter stated that *Ottelia alismoides* (L.) Pers. should not be added to the list of aquatic weeds. The commenter said that in 1977, *Ottelia alismoides* (L.) Pers. was collected in California in an irrigation drainage ditch next to some rice fields, but was never treated, and has never been known to be a problem in the rice fields. This same commenter also asked that a weed already on the list, *Ipomea aquatica*, be deleted from the list because it is grown commercially in California.

APHIS recognizes that *Ottelia alismoides* (L.) Pers. and *Ipomea aquatica* are not problems in California, but they pose a threat to Florida and other southern States. APHIS is taking