Proposed Rules

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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 360

[Docket No. 98–064–1]

RIN 0579–AB07

Noxious Weed Regulations; Update of Current Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are considering revising the noxious weed regulations issued under the Federal Noxious Weed Act in order to maximize their effectiveness. We believe changes may be necessary to improve control and limit the spread of invasive weed species that are not covered under the current noxious weed regulations. We are considering categorizing weeds according to geographic, regulatory, and other criteria. This notice solicits public comment on these categories and on the criteria for assigning weeds to each category. We are also asking the public to help us determine how to prioritize funding resources for existing and future programs. After evaluating public comment on the issues presented in this document, we will determine whether to propose changes to our regulations.

DATES: We invite you to comment on this docket. We will consider all comments we receive by May 19, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–064–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–064–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW, Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Scientific Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

The noxious weeds regulations, contained in 7 CFR part 360 and referred to below as the regulations, were established in 1976 under the authority of the Federal Noxious Weed Act (FNWA) of 1974 (7 U.S.C. 2801 *et seq.*). The FNWA authorizes the Animal and Plant Health Inspection Service (APHIS) to regulate the movement of noxious weeds into or through the United States, and interstate, in order to prevent the artificial spread of noxious weeds into noninfested areas of the United States.

APHIS lists noxious weeds in § 360.200 of the regulations.[1] In this section, weeds are divided into three categories: Aquatic weeds, parasitic weeds, and terrestrial weeds. In order for a weed to be listed, it must meet the definition contained in the FNWA for ''noxious weed.'' The FNWA 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 * * *''

[1] This list is also available on the Internet at http://www.aphis.usda.gov/ppq/bats/fnwsbycat-e.html. Copies of the lsit are also available by contacting Polly Lehtonen at the address listed under **FOR FURTHER INFORMATION CONTACT**.

In simple terms, for a weed to be listed in § 360.200:

- It must have demonstrated that it is harmful to crops, other plants, livestock, poultry, or other interests of agriculture, including irrigation, navigation, the fish or wildlife resources of the United States, or the public health.
- It must be a species of plant that is not native to the United States.
- It must be new to or not be widely prevalent in the United States.

Under the current regulations, listed Federal noxious weeds are only eligible to be moved into and through the United States, or interstate, under a permit granted by APHIS. Persons who move noxious weeds under permit must follow all the conditions contained in the permit with regard to storage, shipment, cultivation, and propagation.

APHIS actively participated in developing the National Strategy for Invasive Plant Management, endorsed and supported by Federal and State Government agencies and nongovernmental private sector interests. The strategy outlines a nationwide effort to address the problem of invasive plant species in the United States. Invasive plant species are plants that are defined as ''noxious weeds'' under the FNWA, as well as other plant species that are, or may be, harmful to crops, other plants, livestock, poultry, fish and wildlife resources, natural areas, or the public health. Effective regulation is a crucial part of the strategy's first goal: effective prevention.

Consistent with that goal and with Executive Order 13112 of February 3, 1999, ''Invasive Species,'' in this document we are informing the public that we are considering revising the Federal noxious weed regulations by creating two categories in which weeds would be grouped according to their distribution. We are also considering, among other things, creating additional weed lists for informational purposes that would contain weeds that are not currently defined as Federal noxious weeds. We are requesting public comment on this initiative.

Requests To Amend the Weed List

In recent years, scientists, State governments, environmental groups, trade groups, and farmers, among others, have requested that APHIS adopt new measures to provide additional safeguards against the introduction and

spread of noxious weeds in the United States. These groups and individuals have expressed concern with the limitations of our current weed-listing policy. They have requested that APHIS provide additional guidance in the identification and control of plants that may not meet the FNWA's definition of ''noxious weed'' but that are known to cause damage to crops, livestock and poultry, and natural ecosystems, and that could otherwise be defined as invasive plant species. These stakeholders perceive that the formal listing of such weeds would be a catalyst for creating awareness and encouraging participation by, and cooperation between, State and local governments and natural resource organizations to establish effective control initiatives.

How the Weed List Could Be Amended

In order to direct safeguarding resources appropriately, we are considering revising the current noxious weed list to categorize noxious weeds according to their distribution. The existing list of Federal noxious weeds would be divided into two categories: (1) Weeds that do not exist in the United States, and (2) weeds that do exist in the United States. For Category 1 weeds, resources would be directed towards exclusion and early detection. For Category 2 weeds, resources would be directed towards exclusion, delimiting surveys, eradication, and containment and/or control.

Further, in order to better address the threat posed to crops, other useful plants, livestock, poultry, fish and wildlife resources, natural areas, and the public health by ''widespread'' native and nonnative weeds, we are considering creating two additional categories of plants that are not currently regulated under the FNWA, but are regulated as noxious weeds by at least one State, or that are believed to be invasive plant species.

Category 1

In developing the Category 1 list, we listed a weed based on the following criteria:

- It is currently listed as a Federal noxious weed (i.e., it has demonstrated that it is harmful to crops, other plants, livestock, poultry, or other interests of agriculture, including irrigation, navigation, the fish or wildlife resources of the United States, or the public health).
- It is not known to exist in the United States.

Weeds that would be listed in this category are known to be harmful and invasive in their native regions or other regions. Additional weeds could be added to this list under the same conditions currently used to identify new or unlisted Federal noxious weeds. The following table lists the weeds currently contained in the Federal noxious weed list that we believe would meet the above criteria.

CATEGORY 1

Federal noxious weed	Common name
Aeginetia spp.	aeginetia.
Alectra spp.	alectra.
Azolla pinnata	mosquito fern, water velvet.
Carthamus oxyacantha	wild safflower.
Caulerpa taxifolia (Mediterranean clone)	caulerpa.
Cuscuta spp. (other than native or introduced species)	dodder.
Digitaria abyssinica	African couchgrass.
Drymaria arenarioides	lightning weed.
Lagarosiphon major	oxygen weed.
Leptochloa chinensis	Asian sprangletop.
Lycium ferocissimum	African boxthorn.
Mikania cordata	mile-a-minute.
Monochoria hastata	monochoria.
Nassella trichotoma	serrated tussock.
Opuntia aurantiaca	jointed prickl pear.
Oryza longistaminata	red rice.
Oryza punctata	red rice.
Prosopis alpataco	mesquite.
Prosopis argentina	mesquite.
Prosopis articulata	mesquite.
Prosopis burkartii	mesquite.
Prosopis caldenia	mesquite.
Prosopis calingastana	mesquite.
Prosopis campestris	mesquite.
Prosopis castellanosii	mesquite.
Prosopis denudans	mesquite.
Prosopis elata	mesquite.
Prosopis ferox	mesquite.
Prosopis fiebrigii	mesquite.
Prosopis hassleri	mesquite.
Prosopis humilis	mesquite.
Prosopis kuntzei	mesquite.
Prosopis palmeri	mesquite.
Prosopis rojasiana	mesquite.
Prosopis ruizlealii	mesquite.
Prosopis ruscifolia	mesquite.
Prosopis sericantha	mesquite.
Prosopis torquata	mesquite.
Sparganium erectum	exotic bur-reed.
Spermacoce alata	borreria.
Striga spp. (other than S. asiatica and S. Gesnerioides)	witchweed.

Once again, the weeds listed above are weeds that we believe do not exist in the United States. If you believe that any of the weeds listed above exists in your area, or in another area of the United States, please submit a written comment to the address listed under **ADDRESSES**.

Category 2

In developing the Category 2 list, we listed a weed based on the following criteria:

• It is currently listed as a Federal noxious weed (*i.e.,* it has demonstrated that it is harmful to crops, other plants, livestock, poultry, or other interests of agriculture, including irrigation, navigation, the fish or wildlife resources of the United States, or the public health; it is not a species of plant native to the United States; and it is new to or not widely prevalent in the United States).

• It occurs (or is suspected to occur) somewhere in the United States.

For a weed to be considered ''new to or not widely prevalent,'' it must not exist in more than a few States. Generally, we have considered weeds that were known to exist in only a few States at the time of listing as eligible for inclusion in the Federal noxious weed list. However, we make exceptions to this policy for weeds that have spread beyond a few States prior to listing if we believe such weeds occupy only a fraction of their full potential range and present a serious threat to other plants, crops, livestock, poultry, or other interests of agriculture.

The table below lists noxious weeds currently listed in the regulations that are known to exist in some areas of the United States. For each listed weed, we have also indicated the State(s) where that weed is believed to exist.

CATEGORY 2

Federal noxious weeds, introduced	Common name	Suspected distribution
Ageratina adenophora	crofton weed	HI, CA
Alternanthera sessilis	sessile joyweed	HI, PR, FL, MD, GA, LA, VI, TX, MS, SC, Al
Asphodelus fistulosus	onionweed	CA, TX, NM
Avena sterilis	animated or wild oat	PA, NJ, CA, OR, VT
Chrysopogon aciculatus	Pilipiliula	HI
Commelina benghalensis	Benghal dayflower	FL, HI, GA, CA, LA
Crupina vulgaris	common crupina	ID, OR, WA, CA, MA
Digitaria velutina	velvet fingergrass TX	
Eichhornia azurea	anchored waterhyacinth	PR, FL
Emex australis	three-comered jack	CA
Emex spinosa	devil's thorn	HI, CA, MA, NJ, TX
Galega officinalis	goatsrue	UT, NY, PA, CT, ME, MA, NE, CO, MD, WA
Heracleum mantegazzianum	giant hogweed	NY, WA, ME, PA, MI
Hydrilla verticillata	hydrilla	widespread (16 States)
Hygrophila polysperma	Miramar weed	FL, VA, TX
Imperata brasiliensis	Brazilian satintail	AL, FL, LA, MS, SC, PR
Imperata cylindrica	cogongrass	AL, FL, GA, HI, MS, OR, LA, SC
Ipomoea aquatica	Chinese waterspinach	CA, FL, TX, HI, PR
Ischaemum rugosum	murain-grass	MD
Limnophila sessiliflora	ambulia	FL, TX, GA
Malaleuca quinquenervia	melaleuca	FL, CA, HI, PR
Melastoma malabathricum	melastoma	HI
Mikania micrantha	mile-a-minute	PR
Mimosa invisa (now in Mimosa diplotrichia)	giant sensitive plant	PR
Mimosa pigra	catclaw mimosa	FL, TX, PR
Monochoria vaginalis	monochoria	CA, HI
Orobanche minor	small broomrape	WA, OR, FL, GA, SC, NC, VA, WV, MD, DE, NJ, PA, NY
Orobanche ramosa	branched broomrape	CA, TX, NC, IL, KY, NJ
Oryza rufipogon	red rice	FL, CA
Ottelia alismoides	duck-lettuce	CA, LA, TX
Paspalum scrobiculatum	Kodo-millet	HI, FL, NJ, TX, MD
Pennisetum clandestinum	Kikuyugrass	CA, HI, AZ, PR
Pennisetum macrourum	African feathergrass	CA, HI
Pennisetum pedicellatum	kyasuma-grass	FL
Pennisetum polystachion	missiongrass	HI, PR, FL
Prosopis farcta	mesquite	AZ
Prosopis pallida	mesquite	HI, PR, VI
Prosopis reptans	mesquite	TX
Prosopis strombulifera	mesquite	CA
Rottboelia cochinchinensis	itchgrass	AL, AR, FL, GA, IN, LA, MS, NC, PR, TX
Rubus fruticosus	wild blackberry complex	NC, SC, VA, WV
Rubus moluccanus	wild blackberry	HI
Saccharum spontaneum	wild sugarcane	FL, HI, PR
Sagittaria sagittifolia	arrowhead	HI
Salsola vermiculata	wormleaf salsola	CA
Salvinia auriculata	giant salvinia	PR
Salvinia molesta	giant salvinia	TX, LA, SC, MS, AL, FL, HI, NC
Setaria pallide-fusca (=S. pumila ssp. pallidifusca).	cattail grass	LA, OR, TX, FL, MD, CA
Solanum tampicense	wetland nightshade	FL
Solanum torvum	turkey berry	FL, HI, PR, CA, AL, MD, VI
Solanum viarum	tropical soda apple	FL, LA, MS, GA, AL, TN, PR
Striga asiatica	witchweed	NC, SC

CATEGORY 2—Continued

Federal noxious weeds, introduced	Common name	Suspected distribution
Striga gesnerioides	indigo witchweed	FL
Tridax procumbens	coat buttons	FL, HI, PR, TX, VI
Urochloa panicoides	liverseed grass	TX, NM, MD

Distributions derived from: PLANTS database, USDA, NRCS, 1997 (http://plants.usda.gov), and Biota of North America Program (BONAP) North Carolina Botanical Garden at UNC Chapel Hill (http://www.cdsl.tamu.edu/FLORA/b98/check98.htm).

If you believe that the distribution of any Category 2 weed listed above is incorrect, please submit a comment to the address provided under **ADDRESSES.**

Category 3

In developing the Category 3 list, we listed a weed based on the following criteria:

- It is not currently listed as a Federal noxious weed.
- It is listed as a weed in at least one State's plant protection regulations.

We would publish this list periodically in the **Federal Register** and on the Internet as an informational service to States, other Federal agencies, and various interest groups. This list would serve as a reference for the public, containing a comprehensive listing of all applicable weeds and the States that list them as noxious weeds. The most current Category 3 list is available on the Internet at http://www.aphis.usda.gov/ppd/rad/noxweeds.html. Copies are also available by contacting Ms. Polly Lehtonen at the address listed under **FOR FURTHER INFORMATION CONTACT.** As stated earlier in this document, weeds listed in Category 3 would not be subject to Federal regulation, and the importation or interstate movement of such weeds would not be restricted.

Category 4

We have not yet developed a Category 4 list, but a weed would likely be listed in Category 4 based on the following, and perhaps other criteria:

- It is not currently listed as a Federal noxious weed.
- It is not listed as a weed in any State's plant protection regulations.
- It has been documented to be an invasive plant species.

We would publish this list periodically in the **Federal Register** and on the Internet as an informational service to States, other Federal Agencies, and various interest groups. This list would serve as a reference for the public, containing a comprehensive listing of all applicable weed species that are not listed in Federal or State regulations, but that are believed to be an invasive plant species. As stated earlier in this document, weeds listed in Category 4 would not be subject to Federal or State regulation.

We would like your comments regarding any additional criteria that you think should be used to determine which weeds should be included in the Category 4 list, including whether we should base the Category 4 list on lists of invasive plant species maintained by scientists in the private sector, such as *Alien Plant Invaders of Natural Areas.*[2] What weed lists should we base the Category 4 list on? If we base the Category 4 list on such weed list(s), should we exclude listed weeds if the weeds are economically valuable to domestic or international trade? What criteria, economic or otherwise, should we base such exclusions on?

Questions—New Weed Categories

We would like your comments as to whether and how these new categories would improve our efforts to control and limit the spread of Federally listed noxious weeds and other weed species. In particular, we would like you to address as many of the following questions as you can:

- Should we divide the current Federal noxious weed list into two categories (Category 1, Federal noxious weeds that do not exist in the United States, and Category 2, Federal noxious weeds that exist in some areas of the United States)?
- Regarding Category 2: Is our listing of the distribution of Federal noxious weeds accurate? Do listed noxious weeds exist in States other than those listed? Have we listed States where a weed is not known to exist?
- As shown in the Category 2 list above, several of the weeds currently listed have spread beyond a few States since their listing (some to as many as 16 States). Should we continue to list weeds that have spread beyond a few States since the time they were originally listed as Federal noxious weeds? At what point should a noxious weed be deleted from Federal regulation by removing it from Category 2? Should any weeds currently listed in Category 2 be moved into Category 3 or Category 4? How should we interpret the part of the FNWA definition of ''noxious weed'' that states that weeds must be ''new to, or not widely prevalent in the United States''? How new is ''new to''? Within the last century? Within the last decade? Rather than consider the number of States a weed occurs in, APHIS could consider whether a weed occupies its full potential biological range. ''Not widely prevalent'' could be defined as ''not yet widely prevalent throughout the weed's potential biological range.'' The difficulty with such an interpretation is that we do not know the potential biological range for most of the weeds already listed. Phytotron studies are expensive and time consuming, and the software for estimating range has limitations. What criteria should APHIS use to determine if a weed is or is not widely prevalent?
- Should we make available and maintain the Category 3 and Category 4 lists as outlined above? Would these lists be useful to States and the public, even though they would not have any binding effect, and would not be accompanied by additional funding to State and local weed control programs?
- In the Category 1 and Category 2 lists, we could continue to group weeds according to their habitat (i.e., aquatic, terrestrial, parasitic). Should there be other divisions within any of the four categories? Should there be fewer than four categories? Should the criteria for listing in any of the categories be modified?

States maintain unique noxious weed lists that often include weeds that do not meet the definition of a Federal noxious weed, but that are of local concern. We would provide a summary of these lists as an informational service. We would make no endorsement regarding the listings, nor would we sanction actions of States pursuant to the listings. Since each State has unique restrictions regarding noxious weeds, we ask that the public please refrain

[2] *Alien Plant Invaders of Natural Areas*—a developing list based on a variety of sources, including those produced or published by The Nature Conservancy (John M. Randall, 1995), California Exotic Pest Plant Council, Florida Exotic Pest Plant Council, Tennessee Exotic Pest Plant Council, University of Hawaii (Hawaii Ecosystems at Risk Project), Faith T. Campbell, Maryland Natural Heritage Program, the University of Florida, and University of Georgia (Kim D. Coder). Available on the World Wide Web at http://www.nps.gov/plants/alien/scie-d.thm.

from commenting on the individual weed listings contained in Category 3. We are unable to address questions or comments regarding the individual Category 3 listings, especially questions or comments regarding particular State regulations and/or restrictions on particular weeds. Such concerns should be addressed to the appropriate State plant board. State officials are requested to submit amendments to their weed list that have been made since the drafting of this rule.

Other Questions

Sterile Cultivars of Federal Noxious Weeds

Imperata cylindrica, a listed Federal noxious weed, has sterile cultivars that are widely planted in the United States and extensively sold in the nursery trade. The wild, seed-producing biotype is clearly undesirable, but many in the nursery trade consider the sterile cultivars to be well-behaved ornamentals. Should there be a category of Federal noxious weeds where only seed producing cultivars are regulated, such that sterile cultivars would be exempt from the regulations? *Imperata cylindrica* would be moved into this category, and other species, such as *Vetiveria zizanioides,* vetiver grass, could be listed in this category as well. Seeds of weeds in this category (and by extension, the commodities they reside in) would be prohibited from entering the United States or moving interstate, but vegetatively produced sterile stock could be moved without restriction.

Weeds for Human Consumption

Some of the currently listed Federal noxious weeds are valued as foods by various groups. For example, *Ipomoea aquatica* (Chinese water spinach) was imported in large quantities before it was listed as a Federal noxious weed and is now widely available in specialty markets around the United States. Should APHIS issues permits for the importation and interstate movement of certain weeds for consumption only? If so, under what conditions?

Pest Risk Assessments

APHIS uses pest risk assessments (PRA's) as a basis for weed exclusion decisions. Individuals with an interest in seeing a particular plant species listed as a Federal noxious weed (Category 1 or Category 2) may submit draft risk assessments for review and consideration. Some of the Category 3 and Category 4 weeds might also be candidates to be listed as Federal noxious weeds, and proponents may submit draft risk assessments for review. The PRA guidelines for weeds are available on the Internet at ''http://www.aphis.usda.gov/ppq/weeds/weedsrisk99.html''. The main components of a risk assessment include:

1. Taxonomy and description of the plant species.
2. Distribution.
3. Local, State, or other control efforts in the United States.
4. Determination of the consequences of introduction by considering risk elements 1–4.
   Risk element 1. Habitat suitability in the United States.
   Risk element 2: Spread potential after establishment, dispersal potential.
   Risk element 3: Economic impact.
   Risk element 4: Environmental impact.
5. Determination of the likelihood of introduction or spread.
6. Citation of references.

We welcome comments related to risk assessment guidelines and the process itself.

Allocation of Resources and Funding

Given that APHIS has limited resources for weed programs, should we focus all our resources on the exclusion of weeds not yet introduced into the United States (Category 1) and on the control and eradication of introduced weeds of limited distribution (Category 2)? Which programs should receive the highest priority for funding? Should we also provide additional guidance on controlling widespread weeds (Category 3 and Category 4)? What kind of guidance should we provide regarding the Category 3 and Category 4 lists?

APHIS conducts the following activities under the weed program. In what order of priority should limited resources be devoted? Which of these activities should receive highest priority? Which should receive lowest?

- Port of entry inspection and detection.
- Eradication of incipient infestations.
- Review of weed permit applications and issuance of weed permits.
- Survey and early detection of noxious weeds.
- Risk assessment to support new listings or delistings.
- Devitalization studies (for example, heat, radiation, and microwave treatments for commodities infested with noxious weeds).
- Weed control technology, development and transfer.
- Regulation review and revision (regulations promulgated under the Federal Noxious Weed Act, Federal Seed Act, and Federal Plant Pest Act).
- Data management.
- Public education.
- Integrated management of introduced weeds (*e.g.,* through biological control), in cooperation with other agencies.

We invite comments on these topics. We also welcome ideas as to different approaches we might take to improve our weed programs. In responding to the questions posed in this notice, commenters are urged to include economic reasons and data supporting their positions, whenever possible.

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 15th day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–6825 Filed 3–17–00; 8:45 am]

BILLING CODE 3410–34–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–26–1–6944b; FRL–6561–7]

Approval and Promulgation of Implementation Plan for New Mexico: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the New Mexico State Implementation Plan (SIP) that contains the transportation conformity rule. If EPA approves this transportation conformity SIP revision, the New Mexico Environment Department will be able to implement and enforce the Federal transportation conformity requirements at the State level per regulations on Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. This proposed action would streamline the conformity process and allow direct consultation among agencies at the local levels. The proposed approval is limited to regulations on Transportation Conformity. The EPA approved the SIP revision for conformity of general Federal actions on September 9, 1998 (61 FR 48407).

The EPA is proposing to approve this SIP revision under sections 110(k) and 176 of the Federal Clean Air Act. The EPA has given its rationale for the