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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,