

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

SUMMARY: We are considering whether we should remove Whittet and AZ-1, two cultivars of kikuyu grass, from the list of noxious weeds. In order to make a scientifically sound decision, we are soliciting data regarding research or studies on cultivars of kikuyu grass. We are especially interested in data concerning potential invasiveness in the United States of cultivars of kikuyu grass.

DATES: We will consider all comments that we receive on or before April 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or electronically. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-067-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-067-1. If you wish to submit electronic comments, please visit the Internet Web site <http://comments.aphis.usda.gov> and follow the instructions there.

You may read any comments that we receive on this docket in our reading room, or online at <http://comments.aphis.usda.gov>. Electronic comments will be posted to this website immediately after receipt, and postal mail/commercial delivery comments will be scanned and posted to the website within a few days after receipt. 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 dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Lidsky, Esq., Assistant Director, Regulatory Coordination, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737-1236; (301) 734-5762.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations were promulgated under the authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), and are set out in 7 CFR part 360 (referred to below as the regulations). The Animal and Plant Health Inspection Service (APHIS) is authorized under the Plant Protection Act (the Act) to regulate the movement of noxious weeds into or through the United States or interstate in order to prevent the artificial spread of noxious weeds into noninfested areas of the United States (7 U.S.C. 7712). Under Executive Order 13112, Invasive Species (February 2, 1999), we are required, among other things, "to prevent the introduction of invasive species * * * and to minimize the economic, ecological, and human health impacts. * * *" The Executive Order defines "invasive species" as "an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health."

We list noxious weeds in § 360.200 of the regulations. 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 Plant Protection Act for "noxious weed." The Plant Protection Act defines a "noxious weed" as " * * * 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."

Kikuyu grass (*Pennisetum clandestinum*) has been listed as a noxious weed since 1983. As stated in our regulations at 7 CFR 360.200, footnote 1, each scientific name in our lists of noxious weeds is intended to include all plants within the genus or species represented by the scientific name. In other words, if the scientific name of a species is listed as a noxious weed, all cultivars are included in the listing. Under our regulations, kikuyu grass, like any other listed noxious weed, is subject to certain restrictions in order to prevent its artificial spread into noninfested areas of the United States. Listed noxious weeds are eligible to be moved into and through the United States, or interstate, only under a permit granted by APHIS. Persons who move noxious weeds under permit must follow all conditions contained in the permit with regard to storage, shipment, cultivation, and propagation. Kikuyu

grass is not permitted to be moved interstate other than to Arizona, California, and Hawaii. Those States have agreed to accept shipments of kikuyu grass. California has listed kikuyu grass (*Pennisetum clandestinum*) as a noxious weed; Arizona and Hawaii have not.

We have received a recent request to remove two cultivars of kikuyu grass—Whittet and AZ-1—from the list of Federal noxious weeds. Based on all information available to us, we believe Whittet and AZ-1 are the only existing cultivars of kikuyu grass that are being moved interstate to Arizona, California, and Hawaii. As explained above, all cultivars of kikuyu grass are included in the list of Federal noxious weeds under the listing for *Pennisetum clandestinum* (kikuyu grass). The requesting individual is not requesting that we remove wild kikuyu grass from the list of Federal noxious weeds, only that we remove the kikuyu grass cultivars Whittet and AZ-1. The requesting individual maintains that our assessment of these cultivars is erroneous and that Whittet and AZ-1 do not qualify for inclusion on the noxious weed list.

Within the past several years, two scientific panels have reviewed pertinent scientific information regarding the invasiveness of Whittet. One independent panel of scientists representing the disciplines of genetics, ecology, weed science, ecosystems management, and cultivar development and evaluation considered all information published on Whittet as of the end of 1998. The panel documented one source published in early 1999. The other review was conducted by the Agricultural Research Service of the United States Department of Agriculture (USDA). The USDA panel considered all available information regarding Whittet, including the independent panel's report and information presented personally by the individual who is now requesting that we delist kikuyu grass cultivars Whittet and AZ-1. Both panels concluded that there is not enough scientific evidence to support removing Whittet from the list of noxious weeds.

Based on the findings of these panels, we continue to include all varieties and cultivars of kikuyu grass on the list of Federal noxious weeds. Both panels' reports and a list of other sources of information regarding kikuyu grass are available for review on the Internet at <http://comments.aphis.usda.gov>.

If we remove Whittet and AZ-1 from the list of noxious weeds, that would potentially remove all noxious weed-related interstate and import restrictions that now apply to these cultivars of