

# Rules and Regulations

Federal Register

Vol. 64, No. 50

Tuesday, March 16, 1999

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.

## EXECUTIVE OFFICE OF THE PRESIDENT

### 3 CFR Part 100

#### Repeal of Standards of Conduct for Employees of the Executive Office of the President

**AGENCY:** Executive Office of the President (EOP).

**ACTION:** Final rule.

**SUMMARY:** The Executive Office of the President (EOP) is repealing its old standards of conduct that have been superseded by the Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and executive branch financial disclosure regulations. The EOP is inserting a cross-reference to these OGE regulations.

**EFFECTIVE DATE:** This regulation is effective March 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** Amy Comstock, Associate Counsel to the President, (202) 456-6229.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006-35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions at 59 FR 4779-4780 and 60 FR 6390-6391. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

The EOP is repealing its superseded Standards of Conduct at 3 CFR part 100, and is replacing those provisions with a single section that provides cross-references to 5 CFR parts 2634 and 2635.

## II. Repeal of the Old EOP Standards of Conduct Regulations

Because the EOP's Standards of Conduct have been superseded by the new executive branch financial disclosure regulations at 5 CFR part 2634, and by the Standards at 5 CFR part 2635, the EOP is repealing all of its existing 3 CFR part 100. To ensure that employees are on notice of the currently effective ethical standards which apply to them, the EOP is replacing its old standards at 3 CFR part 100 with a residual provision that cross-references 5 CFR parts 2634 and 2635.

## III. Matters of Regulatory Procedure

### *Administrative Procedures Act*

The Executive Office of the President has found that good cause exists under 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30 day delay in effectiveness as to this final rule and repeal. This rulemaking is related to the EOP organization, procedure, and practice.

### *Executive Order 12866*

In promulgating this final rule, EOP has adhered to the regulatory philosophy and the applicable principles of regulations set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation is not deemed "significant" under that Executive order.

### *Regulatory Flexibility Act*

The EOP has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only EOP employees.

### *Paperwork Reduction Act*

The Executive Office of the President has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements.

### *Environmental Impact*

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

## List of Subjects in 3 CFR Part 100

Conflicts of Interest, Government employees.

Approved: March 3, 1999.

**Charles Ruff,**

*Counsel to the President, Executive Office of the President.*

For the reasons set forth in the Preamble, the Executive Office of the President is amending title 3 of the Code of Federal Regulations, Chapter I as follows:

1. Part 100 of 3 CFR chapter I is revised to consist of § 100.1 to read as follows:

## PART 100—STANDARDS OF CONDUCT

### § 100.1 Ethical conduct standards and financial disclosure regulations.

Employees of the Executive Office of the President are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

**Authority:** 5 U.S.C. 7301.

[FR Doc. 99-6392 Filed 3-15-99; 8:45 am]

BILLING CODE 3195-01-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Parts 360 and 361

[Docket No. 98-063-2]

### Noxious Weeds; Update of Weed Lists

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the noxious weeds regulations by adding *Solanum tampicense* Dunal (wetland nightshade) and *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic weeds and removing *Ipomoea triloba* Linnaeus from the list of terrestrial weeds. We are also updating the taxonomic names of two other weeds currently listed and making one editorial change to the regulations. These actions are necessary to prevent the artificial spread of noxious weeds into noninfested areas of

the United States, to remove unnecessary restrictions, and to make the regulations easier to understand.

**EFFECTIVE DATE:** April 15, 1999.

**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**

The noxious weed regulations were promulgated under authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), 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.

Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. 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. The Animal and Plant Health Inspection Service's (APHIS') regulations implementing the provisions of Title III of FSA are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weeds whose seeds have no tolerances applicable to their introduction into the United States.

On December 4, 1998, we published in the **Federal Register** (63 FR 67011-67014, Docket No. 98-063-1) a proposal to amend the noxious weed regulations by adding two weeds to the list of aquatic weeds in § 360.200(a), removing another weed from the list of terrestrial weeds in § 360.200(c), and updating the taxonomy of two other currently listed weeds. Also, since the FSA regulations in § 361.6(a) support the noxious weed regulations by prohibiting or restricting the importation of the seeds of noxious weeds listed in § 360.200, we proposed to amend the noxious weed seed list in § 361.6(a) accordingly.

We held a public hearing on the proposed rule on January 6, 1999. No one came to speak about the proposed rule. We also solicited comments concerning our proposal for 60 days ending February 2, 1999. We received

six comments by that date. They were from representatives of State governments and members of the scientific community. We carefully considered all of the comments we received. They are discussed below.

*Caulerpa taxifolia*

All six of the comments that we received were strongly in favor of adding *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic weeds.

One commenter stated that it may be difficult to distinguish the Mediterranean clone of *C. taxifolia* from other strains of *C. taxifolia*, and thus, in order to effectively implement our proposal to prohibit the importation of *C. taxifolia* (Mediterranean clone), all strains of *C. taxifolia*, and possibly other species of *Caulerpa*, or even the whole genus, should be listed as Federal noxious weeds.

We agree that there may be some difficulty distinguishing between the Mediterranean clone and noninvasive strains of *C. taxifolia*; however, we believe that listing other, noninvasive strains of *C. taxifolia* would create unnecessarily rigid trade restrictions. We believe that listing only the Mediterranean clone of *C. taxifolia*, as proposed, is sufficient to protect against the introduction of the weed into United States. APHIS personnel will be instructed to refuse shipments that contain what appears to be *C. taxifolia* of any variety if it originates or passes through areas where the Mediterranean clone is established or thought to be established. We believe these measures to be sufficient to protect against the introduction of *C. taxifolia* (Mediterranean clone). Therefore, we are not making any changes in response to this comment.

*Revision of the Weed List*

Three commenters suggested that instead of listing weeds that are prohibited from being imported into the United States, APHIS should develop a list of plant species that are allowed to be imported into the United States. Under the commenters' suggestion, all plants of foreign origin would be prohibited from entering into the United States unless scientific evidence showed that the importation of such plants presented little or no risk of endangering U.S. agriculture, fish and wildlife, or the public health.

The Federal noxious weed list was created under the authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*). We are unable to propose or make changes to the weed list as suggested by

the commenters because we have no authority to do so under the FNWA. The FNWA provides APHIS with the authority to identify noxious weeds and regulate their importation into the United States. The FNWA does not give APHIS the authority to prohibit the importation of all non-native plant species pending judgment that individual species pose no risk to U.S. agriculture, fish and wildlife, or the public health.

*Ipomoea triloba*

One commenter stated that *Ipomoea triloba* should not be removed from the list of terrestrial weeds because, according to an expert on *I. triloba*, the species has greatly expanded its range within the past 5 years within Florida. The commenter further stated that it is possible that new genetic strains of the species have been introduced into Florida, and that these new strains, which may be of foreign origin, have out-competed the native species, and have spread beyond the range of the native species.

We are not making any changes in response to this comment because we have no scientific data available to distinguish between native and foreign strains of *I. triloba*. Under current law, we have no authority to regulate native weed species. When taxonomists can distinguish non-native genetic strains of *I. triloba* from native strains of *I. triloba*, we will consider listing the non-native strains as Federal noxious weeds.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

**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.

In accordance with 5 U.S.C. 603, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the impact of this rule on small entities.

In accordance with 7 U.S.C. 2803 and 2809, the Secretary of Agriculture is authorized to promulgate regulations to prevent the movement of any noxious weed into the United States, or interstate, except under conditions prescribed by the Secretary.

**Addition of *S. tampicense* and *C. taxifolia* (Mediterranean clone)**

This rule will add *Solanum tampicense* (wetland nightshade) to the list of Federal noxious weeds. *S.*

*tampicense* will grow as a perennial only in areas free of frost, and is therefore a threat to southern Florida and areas of the country with a climate similar to that of southern Florida. *S. tampicense* is currently established in five counties in southwestern Florida and could have economic consequences for livestock producers in those areas. Its prickly growth may inhibit access by livestock to wetland areas, a potentially serious dry-season problem.

The majority of cattle operations in the counties harboring existing populations of *S. tampicense* are small entities. The extent to which they would be adversely affected by the continued spread of *S. tampicense* is not known. Preventing further introductions and curtailing spread would have a positive economic impact on livestock producers not yet affected.

The unchecked spread of *S. tampicense* could also have a negative effect on natural ecosystems. Although the extent to which *S. tampicense* could displace other natural species is not known, the weed could have harmful effects on natural vegetation and wildlife due to the proximity of Everglades National Park to the currently affected areas. In responding to the potential harm caused by *S. tampicense* to natural ecosystems, one or more small organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to spread. Although the size and magnitude of such potential costs are not known, it is clear that this rule will help to ensure that the costs would be minimized.

This rule will also add *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic noxious weeds. We believe that some importers may currently be importing *C. taxifolia* (Mediterranean clone) into the United States for use in public and private aquariums, but data on the amount of *C. taxifolia* (Mediterranean clone), if any, currently being imported into the United States is unavailable. The unchecked spread of *C. taxifolia* (Mediterranean clone) into the United States could, however, have a negative effect on natural ecosystems, given its significant negative effects on the regions in the Mediterranean where it is already established. In responding to the potential harm caused by *C. taxifolia* (Mediterranean clone) to natural ecosystems, one or more organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to be introduced into the environment. Although the size and magnitude of such potential costs are not known, it is clear that this rule will

help to prevent the need for such expenditures.

We therefore believe that adding *S. tampicense* and *C. taxifolia* (Mediterranean clone) to the list of Federal noxious weeds will help preclude potential economic and ecological consequences that could result from their spread.

#### Removal of *Ipomoea triloba*

We are removing *Ipomoea triloba* (little bell, aiea morning glory) from the list of Federal noxious weeds because it has been determined that *I. triloba* is a species native to Florida. Native species are not within the scope of the FNWA, and we therefore have no authority to continue to regulate *I. triloba*. The delisting of *I. triloba* could have a slightly positive economic effect on importers of agricultural and vegetable seed, whose shipments would no longer be delayed or refused at the port of entry due to contamination with *I. triloba*.

#### Alternatives Considered

The only significant alternative to this rule was to make no changes in the regulations, i.e., to not add *S. tampicense* and *C. taxifolia* (Mediterranean clone) to the list of Federal noxious weeds and to retain *I. triloba* on that list. We rejected the alternative of not listing *S. tampicense* and *C. taxifolia* (Mediterranean clone) as Federal noxious weeds because of the potential economic and ecological consequences that we believe will result from their spread. We also rejected the alternative of retaining *I. triloba* on the list of Federal noxious weeds because it has been determined that *I. triloba* is a species native to Florida. Native species are not within the scope of the FNWA, and we therefore have no authority to regulate *I. triloba* as a Federal noxious weed.

This final rule contains no new information collection or recordkeeping requirements.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, 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 new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

##### 7 CFR Part 361

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

Accordingly, we are amending 7 CFR parts 360 and 361 as follows:

#### PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 continues to read as follows:

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

##### § 360.200 [Amended]

2. Section § 360.200 is amended as follows:

a. In paragraph (a), the paragraph heading is revised to read "Aquatic and wetland weeds."

b. In paragraph (a), the list of noxious weeds is amended by adding, in alphabetical order, entries for "*Caulerpa taxifolia* (Mediterranean clone)" and "*Solanum tampicense* Dunal (wetland nightshade)".

c. In paragraph (c), the list of noxious weeds is amended by removing the entries for "*Borreria alata* (Aublet) de Candolle", "*Ipomoea triloba* Linnaeus (little bell, aiea morning glory)", and "*Rottboellia exaltata* Linnaeus f. (itchgrass, raoulgrass)", and by adding, in alphabetical order, entries for "*Rottboellia cochinchinensis* (Lour.) W. Clayton" and "*Spermacoce alata* (Aublet) de Candolle".

#### PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

3. The authority citation for part 361 continues to read as follows:

**Authority:** 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.2(c).

##### § 361.6 [Amended]

4. In § 361.6, paragraph (a)(1), the list of noxious weeds is amended as follows:

a. The entries for "*Borreria alata* (Aublet) de Candolle" and "*Ipomoea triloba* L." are removed.

b. The entry for "*Rottboellia cochinchinensis* Clayton" ("=*R. exaltata* (L.)L. f.") is amended by removing the words "Clayon (= *R. exaltata* (L.)L. f.)" and adding the words "W. Clayton" in their place.

c. New entries for "*Caulerpa taxifolia* (Mediterranean clone)", "*Solanum tampicense* Dunal (wetland nightshade)", and "*Spermacoe alata* (Aublet) de Candolle" are added in alphabetical order.

Done in Washington, DC, this 11th day of March 1999.

**Joan M. Arnoldi,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99-6344 Filed 3-15-99; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 782

RIN 0560-AF64

#### End-Use Certificate Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule will amend regulations governing the End-Use Certificate Program for imported Canadian wheat to allow the Farm Service Agency (FSA) to collect additional information regarding distinguishing characteristics of imported wheat. This rule also will revise the definition of importer to include only the importer of record as recognized by the U.S. Customs Service. Lastly, the deadline for submission of the End-Use Certificate will be revised from 15 work days to 10 work days after the date of entry. These changes are necessary to facilitate a cooperative effort between FSA and the U.S. Customs Service to make End-Use Certificates a part of the official entry summary package. These changes will also help ensure that Canadian wheat will not benefit from U.S. export programs. This rule takes into consideration the comments received on a January 13, 1999 proposed rule (64 FR 2152).

**EFFECTIVE DATE:** March 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** Timothy R. Murray, Chief, Inventory Management Branch, U.S. Department of Agriculture, Farm Service Agency, STOP 0553, 1400 Independence

Avenue, SW, Washington, DC 20250-0553; telephone (202) 720-6125; FAX (202) 690-0014; E-mail Tim\_Murray@usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined not significant and therefore has not been reviewed by the Office of Management and Budget under Executive Order 12866.

##### Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

##### Paperwork Reduction Act

The amendments to 7 CFR part 782 set forth in this proposed rule involve a change in the existing information collection requirements which were previously cleared by OMB under the provisions of 44 U.S.C. 35. In accordance with § 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements were included in the proposed rule and a request for emergency approval was submitted to the Office of Management and Budget (OMB). OMB has assigned control number 0560-0151 to the information collection and recordkeeping requirements. A regular submission of the information collection will be forwarded to OMB at the end of the comment period.

##### Regulatory Flexibility Act

On January 26, 1995, FSA published a final rule that established program requirements for the End-Use Certificate Program. A copy of this Regulatory Flexibility Analysis is available upon request from Timothy Murray, Warehouse and Inventory Division, FSA, STOP 0553, 1400 Independence Avenue, Washington, DC 20250-0553; telephone (202) 690-4321.

Because these changes will not have an adverse impact on a substantial number of small businesses, a Regulatory Flexibility Assessment is not required.

##### Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an

Environmental Impact Analysis is needed.

##### Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule are not retroactive and do not preempt any State laws.

##### Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

##### Background

This final rule amends the regulations at 7 CFR Part 782 with respect to the U.S. End-Use Certificate Program. Since February 27, 1995, the effective date for the implementation of the End-Use Certificate Program, several items have been identified that could improve the effectiveness and the efficiency of the End-Use Certificate Program. To further ensure that Canadian wheat does not benefit from U.S. export programs, End-Use Certificates will include distinguishing characteristics of grade, protein content, moisture content, dockage and date of sale in addition to the class and/or varietal information currently collected for each shipment. These additional data are deemed necessary because imported wheat may benefit from U.S. export programs even if the imported wheat itself is not directly eligible for use under such programs. Such benefit may accrue if wheat of the type or quality used under U.S. export programs (including humanitarian assistance programs) is imported into the United States in anticipation of, or as a result of use of a similar type or quality of U.S. wheat under the U.S. program. Indeed, the Department of Agriculture is frequently implored not to take action to facilitate sales of U.S. wheat out of a concern that such sales will only encourage off-setting imports of Canadian wheat. This rule provides for the collection of necessary information to monitor for such an occurrence and potentially allow appropriate actions to minimize such an occurrence. In addition, these additional data will help facilitate effective program audits while minimizing the burden on importers of Canadian wheat.

This rule will also replace the current definition used for "Importer" found at 7 CFR 782.2 with the same definition