requirements set forth in §§ 890.1022 through 1024, as well as this section, apply.

(c) *Settling or compromising proposed sanctions.* As part of or in lieu of a contest, a provider may offer to settle the proposed penalties and assessments. The debarring official has authority to settle or compromise proposed sanctions at any time before issuing a final decision under § 890.1071.

§ 890.1068 Effect of not contesting proposed penalties and assessments.

(a) *Proposed sanctions may be implemented immediately.* If a provider does not inform the debarring official of his intention to contest proposed penalties and assessments within the 30-day period set forth by § 890.1067(a), OPM may implement the proposed sanctions immediately, without further procedures.

(b) *Debarring official sends notice after implementing sanctions.* The debarring official shall send the provider written notice, via certified return receipt mail or express delivery service, stating:

(1) The amount of penalties and assessments imposed;

(2) The date on which they were imposed; and

(3) The means by which the provider may pay the penalties and assessments.

(c) *No appeal rights.* A provider may not pursue a further administrative or judicial appeal of the debarring official's final decision implementing any sanctions unless a timely contest was filed in response to OPM's notice under § 890.1066.

§ 890.1069 Information the debarring official shall consider in deciding a provider's contest of proposed penalties and assessments.

(a) *Documentary material and written arguments.* As part of the contest, a provider shall furnish a written statement of reasons why the proposed penalties and assessments should not be imposed and/or why the amounts proposed are excessive.

(b) *Mandatory disclosures.* In addition to any other information submitted during the contest, the provider shall inform the debarring official in writing of:

(1) Any existing, proposed, or prior exclusion, debarment, penalty, assessment, or other sanction that was imposed by a Federal, State, or local government agency, including any administrative agreement that purports to affect only a single agency; and

(2) Any current or prior criminal or civil legal proceeding that was based on the same facts as the penalties and assessments proposed by OPM.

(c) *In-person appearance.* A provider may request a personal appearance (in person, by telephone conference, or through a representative) to provide testimony and oral arguments to the debarring official.

§ 890.1070 Burdens of proof and standards of evidence in contests of proposed penalties and assessments.

(a) *Previously determined facts.* Any facts relating to the basis for the proposed penalties and assessments that were determined in a prior due process proceeding are binding on the debarring official in deciding the contest. Prior due process proceedings are those set forth in § 890.1025(a)(1) through (4).

(b) *Preponderance of the evidence.* To impose penalties and assessments, the debarring official must find that the preponderance of the evidence in the entire official record demonstrates that the provider committed a sanctionable violation described in § 890.1061.

(c) *Final decision regarding the amount of penalties and assessments.* If the preponderance of the evidence establishes that a provider committed a sanctionable violation for which penalties and assessments may be imposed, the debarring official may impose financial sanctions in amounts not exceeding those proposed in the notice issued to the provider under § 890.1066.

§ 890.1071 Deciding contests of proposed penalties and assessments.

(a) *Debarring official reviews entire official record.* After the provider submits the information and evidence authorized or required by § 890.1069, the debarring official shall review the entire official record to determine if the contest can be decided without additional administrative proceedings, or if an evidentiary hearing is required to resolve disputed material facts.

(b) *Deciding the contest without further proceedings.* To decide the contest without further administrative proceedings, the debarring official must determine that the evidentiary record contains no *bona fide* dispute as to material facts. A ''material fact'' is a fact essential to determining whether a provider committed a sanctionable violation for which penalties and assessments may be imposed. If there are no *bona fide* disputed material facts, the debarring official shall apply the provisions of § 890.1070 to reach a final decision of the contest.

(c) *Bona fide dispute about material facts.* If the debarring official determines that the official record contains a *bona fide* dispute about any fact material to the basis for the proposed penalties and assessments, a fact-finding hearing shall be held to resolve the disputed facts. The provisions of §§ 890.1027(b) and (c), 1028, and 1029(a) and (b) govern such hearings.

(d) *Debarring official's decision after fact-finding hearing.* After receiving the results of the fact-finding hearing, the debarring official shall apply the provisions of § 890.1070 to reach a final decision of the contest.

§ 890.1072 Further appeal rights after final decision to impose penalties and assessments.

If the debarring official's final decision imposes any penalties and assessments, the affected provider may appeal it to the appropriate United States district court under the provisions of 5 U.S.C. 8902a(h)(2).

§ 890.1073 Collecting penalties and assessments.

(a) *Agreed-upon payment schedule.* At the time OPM imposes penalties and assessments, or the amounts are settled or compromised, the provider shall be afforded the opportunity to arrange an agreed-upon payment schedule.

(b) *No agreement on payment schedule.* In the absence of an agreed-upon payment schedule, OPM shall collect penalties and assessments under its regular procedures for resolving debts owed to the Employees Health Benefits Fund.

(c) *Offsets.* As part of its debt collection efforts, OPM may request other Federal agencies to offset the penalties and assessments against amounts that the agencies may owe to the provider, including Federal income tax refunds.

(d) *Civil lawsuit.* If necessary to obtain payment of penalties and assessments, the United States may file a civil lawsuit as set forth in 5 U.S.C. 8902(i).

(e) *Crediting payments.* OPM shall deposit payments of penalties and assessments into the Employees Health Benefits Fund.

[FR Doc. 03–3125 Filed 2–7–03; 8:45 am]

BILLING CODE 6325–52–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 02–067–1]

Noxious Weeds; Cultivars of Kikuyu Grass

AGENCY: Animal and Plant Health Inspection Service, USDA.

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

kikuyu grass. Any change to the noxious weed status of Whittet and AZ–1 would not, however, affect the possible regulation of Whittet and AZ–1 under other applicable regulations contained in 7 CFR, chapter III.

We are soliciting comments on the request we have received to remove Whittet and AZ–1, cultivars of kikuyu grass, from the list of noxious weeds in § 360.200. We welcome any comments regarding this request, including those documenting personal experiences with Whittet and AZ–1. However, we need research data in order to make a scientifically-sound decision regarding delisting Whittet and AZ–1 as noxious weeds. We believe we are aware of all research on kikuyu grass cultivars published prior to and during 1998; therefore, unpublished research conducted prior to or during 1998 and published or unpublished research conducted after that year would be especially helpful. In particular, we are soliciting information on the following issues:

1. At this time, we are aware of the existence of kikuyu grass cultivars Whittet and AZ–1. Are there any other cultivars of kikuyu grass that we need to consider for delisting? If so, please identify these cultivars.

2. What is the invasive potential in the United States of Whittet and AZ–1? What is the invasive potential in the United States of other cultivars of kikuyu grass that should be considered for delisting? Would Whittet and AZ–1, and other cultivars of kikuyu grass, be considered ''invasive species'' within the meaning of Executive Order 13112? Please explain and provide specific data supporting your conclusions.

3. Were any unpublished research or studies conducted on Whittet or AZ–1 during or prior to 1998? Has any research on Whittet or AZ–1 been conducted, published or unpublished, since 1998? If so, please identify the research or studies and provide results, especially data concerning invasiveness and potential noxious weediness.

4. If Whittet and AZ–1 have invasive potential in the United States, can they be controlled? If so, specify the conditions and control techniques and to which cultivar they should be applied. Include detailed supporting data.

5. Are there natural mechanisms that would tend to render control procedures ineffectual for Whittet and AZ–1 and that might contribute to the spread of these cultivars outside of agricultural settings?

We urge all commenters to include all relevant data supporting their positions.

Authority: 7 U.S.C. 7711–7714, 7718, 7731, 7751, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 4th day of February 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3181 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 1466

RIN 0587–AA31

Environmental Quality Incentives Program

AGENCIES: Natural Resources Conservation Service and Commodity Credit Corporation, Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule implements the provisions of Title II of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to the Environmental Quality Incentives Program. The Natural Resources Conservation Service (NRCS) proposes to revise and update the rule for the Environmental Quality Incentives Program (EQIP). This proposed rule describes how the NRCS intends to implement EQIP as authorized by amendments in the 2002 Act.

DATES: Comments must be received by March 12, 2003.

ADDRESSES: Submit written comments to Mark W. Berkland, Director, Conservation Operations Division, U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), 1400 Independence Avenue SW., Room 5241, Washington, DC 20250–2890. This proposal may also be accessed, and comments submitted, via Internet. Users can access the NRCS homepage to submit comments to *FarmBillRules@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, Conservation Operations Division, USDA, 1400 Independence Avenue SW., Room 5241, Washington, DC 20250–2890. Phone: (202) 720–1845; e-mail: *mark.berkland@usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Program

The Farm Security and Rural Investment Act of 2002 (the 2002 Act) (Pub. L. 107–171, May 13, 2002) re-authorized and amended the Environmental Quality Incentives Program, which had been added to the Food Security Act of 1985 (the 1985 Act) (16 U.S.C. 3801 *et seq.*) by the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104–127). The 2002 Act also amended the Environmental Conservation Acreage Reserve Program by changing the section name to the Comprehensive Conservation Enhancement Program and removing the authority for the Secretary of Agriculture to designate areas as conservation priority areas.

As provided by section 1241 of the 1985 Act (16 U.S.C. 3841), as amended by the 2002 Act, the funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out EQIP. (The Chief of the NRCS is a vice-president of the CCC.) Accordingly, where NRCS is mentioned in this rule, it also refers to the CCC's funds, facilities, and authorities where applicable.

Through EQIP, NRCS provides assistance to farmers and ranchers who face threats to soil, water, air, and related natural resources on their land. These include grazing lands, wetlands, private non-industrial forest land, and wildlife habitat. Participation in the program is voluntary. Under EQIP, NRCS will provide assistance in a manner that will promote agricultural production and environmental quality as compatible goals, optimize environmental benefits, and help farmers and ranchers meet Federal, State, and local environmental requirements. NRCS will offer the program throughout the Nation using the services of NRCS and technical service providers. NRCS will implement a consolidated and simplified process to reduce any administrative burdens that would otherwise be placed on producers.

In this rule, NRCS proposes to incorporate changes in the EQIP regulations, 7 CFR 1466, resulting from the passage of the 2002 Act. Several important changes were made in the 2002 Act that require changes to the regulation. These include:

(1) Changing the maximum payment limitation from $50,000 per person per contract to $450,000 per individual or entity for all contracts entered into in fiscal years 2002 through 2007;

(2) Revising the purpose from ''maximize environmental benefits per