

GUIDE TO THE DELISTING PROCESS FOR FEDERAL NOXIOUS WEEDS

The Six Steps

1. Identify a Federal noxious weed that may no longer meet the definition of “quarantine pest”.
2. Prepare a risk assessment
3. Prepare an environmental assessment if warranted
4. Publish a proposed rule in the Federal Register
5. Analyze and respond to public comments
6. Publish a final rule in the Federal Register

Discussion of Each Step

1. Identify a weed that may no longer meet the definition of “quarantine pest”.

All Federal noxious weeds were determined, at the time of their listing, to pose economic and/or environmental risks to the United States. However, a Federal noxious weed may be targeted for delisting if it no longer meets the definition of “quarantine pest,” which is

"a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled."

Economic importance includes environmental impacts. The International Plant Protection Convention definition of “official control” is:

"The active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated non-quarantine pests."

Anyone may petition the Secretary of Agriculture to remove a weed from the regulations. Minimally, a petition to remove a weed from the list of quarantine pests should provide one or more of the following, preferably in electronic format:

- A. Evidence that the species is distributed throughout its potential range or has spread too far to implement effective control.
- B. Evidence that control efforts have been unsuccessful and further efforts are unlikely to succeed.
- C. For cultivars of a listed weed, scientific evidence that the cultivar has a combination of risk elements that result in a low pest risk. For example, the cultivar may have a

narrow habitat suitability, low dispersal potential, evidence of sterility and/or inability to cross pollinate with introduced wild types, which then might produce seed of weedier biotypes, and few if any potential negative impacts on the economy and/or environment of the United States.

2. Prepare a risk assessment

The guidelines and template for a weed risk assessment are on the APHIS web site at <http://aphis.usda.gov/ppq/weeds>. APHIS staff members prepare a few assessments each year as other priorities allow. Because resources for weed risk assessment within APHIS are limited, we encourage stakeholders to submit draft risk assessments for review. The eight steps in weed-initiated plant pest risk assessments are:

Stage 1: Initiating the process

- Step 1. Document the event(s) that initiated the pest risk assessment (PRA)
- Step 2. Identify and cite previous risk assessments
- Step 3. Establish identity of the organism

Stage 2: Assessing pest risk

- Step 4. Verify “quarantine pest” status
- Step 5. Assess economic and environmental importance
- Step 6. Assess likelihood of introduction
- Step 7. Determine pest risk potential of organism
- Step 8. Cite references

If an organism does not meet the definition of quarantine pest, the assessment stops at Step 4 and the organism is eligible for a proposal to delist it. For a cultivar or biotype, we consider the organism to be eligible for delisting if the outcome of Step 7 is a pest risk potential lower than medium /high.

3. Prepare an environmental assessment

If delisting a weed may have environmental impacts, APHIS prepares an environmental assessment (EA) in accordance with the National Environmental Policy Act. (We do not prepare an EA when we propose delisting a weed because a taxonomic reclassification determines the weed taxon is synonymous with a native species.) We publish a notice of availability of the EA in the Federal Register, receive and analyze public comments, and decide whether or not to proceed with a proposed rule.

4. Publish a proposed rule in the Federal Register

Because Federal noxious weeds are listed in the regulations in Title 7 of the Code of Federal Regulations (CFR), parts 360 and 361, deleting a weed from the list requires a

change to the regulations. A weed program staff member prepares a work request, called a regulatory work plan, for a proposed rule to be published in the Federal Register for public comment. The regulatory work plan is submitted to a staff in APHIS that provides regulatory drafting services – the Regulatory Analysis and Development (RAD) staff. The RAD staff forwards the regulatory work plan for clearance through policy officials in USDA and assigns a writer to draft the proposed rule. The Office of Management and Budget (OMB) also classifies the action under Executive Order 12866, Regulatory Planning and Review. OMB may waive review of an action or will designate the action “not significant” or “significant.” Any action designated “significant” must be reviewed by the OMB before it can be published in the Federal Register.

In addition to drafting the proposed rule, APHIS must complete various analyses required by laws and Presidential executive orders to support the proposed rule. These include an analysis of the potential economic effects of the rule on small entities.

The proposed rule and its accompanying analyses must undergo legal and policy reviews. The Office of General Counsel (OGC) reviews for legal sufficiency. If the proposed rule has been designated “significant” by OMB, the proposed rule must be cleared by a number of USDA offices outside APHIS and then by OMB. If OMB waived review or designated the proposed rule “not significant,” there is minimal USDA review beyond APHIS, and the proposed rule is not reviewed by OMB.

Once all reviews are completed, the proposed rule is signed and sent to the Federal Register. The public is invited to comment, usually for 60 days. During this time, the World Trade Organization is notified about the proposed action.

5. Analyze and respond to public comments

After the comment period ends, we review all comments received. We identify each issue raised and decide how to respond. We do not respond directly to each commenter. Rather, we respond to issues raised by the commenters in the introduction (or Supplementary Information section) of the final rule. We must explain why we agree or disagree with the comment and what, if any, change we are making in the final rule as a result. Note: We can also decide to withdraw a proposed rule at this stage. If so, we will publish a Notice of Withdrawal in the Federal Register.

6. Publish the final rule

Review and clearance procedures for a final rule are similar to those for a proposed rule. This includes submitting a document to OMB, based on which OMB may waive review of the final rule or will designate it “not significant” or “significant.”

The final rule is drafted. The analyses prepared for the proposed rule are updated and adjusted if necessary. Final rules must also be reviewed by OGC for legal sufficiency and by APHIS and USDA policy officials and, if “significant,” by OMB. Once all reviews are completed, the final rule is signed and sent to the Federal Register. The

published rule includes an effective date.