

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DIVISION OF AGRICULTURAL ENVIRONMENTAL SERVICES

BUREAU OF FEED, SEED, AND FERTILIZER

RULE TITLE: RULE NO.:

Noxious Weed Seed 5E-4.003

Disposition of Seed Contaminated with Noxious Weed Seed 5E-4.0041

PURPOSE AND EFFECT: The purpose of the proposed action is to amend Rules 5E-4.003, and 5E-4.004 to reclassify Nutgrass, *cyperus rotundus*, and Tropical Soda Apple, *solanum viarum*, from the status of prohibited noxious weed seed to restricted noxious weed seed. The proposed modifications will allow Florida grown seed lots, predominately bahiagrass and aeschymomene, found by laboratory analysis to contain a maximum of one Tropical Soda Apple seed per pound to be relabeled to explicit standards and sold only in Florida. The rule modification will also permit the sale of peanut seed lots found to be contaminated with nutgrass at a rate of one seed per pound. These modifications will provide the Florida seedsmen an option other than destruction thereby reducing the economic hardship to Florida's seed industry.

SUMMARY: The proposed rule action will amend Rules 5E-4.003, and 5E-4.004 to reclassify Nutgrass, *cyperus rotundus*, and Tropical Soda Apple, *solanum viarum*, from the status of prohibited noxious weed seed to restricted noxious weed seed. The proposed modifications will allow Florida grown seed lots, predominately bahiagrass and aeschymomene, found by laboratory analysis to contain a maximum of one Tropical Soda Apple seed per pound to be relabeled to explicit standards and sold only in Florida. This rule modification will also permit the sale of peanut seed lots found to be contaminated with nutgrass at a rate of one seed per

pound. These modifications will provide the Florida seedsmen an option other than destruction thereby reducing the economic hardship to Florida's seed industry. It should be noted the requirements for destruction of seed lots that fail two consecutive attempts to reprocess will change. It will no longer be required that incineration or burial have to be in a solid waste disposal facility that has been permitted or is exempt from permit under Rule 62.701.320, F.A.C., Solid Waste Management Facilities.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A statement of Estimated Regulatory Cost has not been prepared for this rule. Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower costs regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 570.07(23), 578.11(2), F.S.

LAW IMPLEMENTED: 578.11(3), 578.12, F.S.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE A HEARING WILL BE NOTICED IN THE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mr. Weldon Collier, Chief of the Bureau of Feed, Seed, and Fertilizer; 3125 Conner Boulevard, Lab #7, Tallahassee, Florida, 32399; (850) 414-1555.

THE FULL TEXT OF THE PROPOSED RULE IS:

5E-4.003 Noxious Weed Seed.

(1) Prohibited noxious weed seed shall include:

- | | |
|---|---------------------------|
| (a) Bindweed (<i>Convolvulus arvensis</i>) | None per pound |
| (b) Nutgrass (<i>Cyperus rotundus</i>) | None per pound |
| (b)(e) Serrated tussock (<i>Nassella trichotoma</i>) | None per pound |
| (d) Tropical soda apple (<i>Solanum viarum</i>) | None per pound |
| (c)(e) Benghal dayflower (<i>Commelina benghalensis</i>) | None per pound |
- (2) Restricted noxious weed seed shall include:

(a) Annual bluegrass (<i>Poa annua</i>)	1,000 per pound
(b) Balloonvine (<i>Cardiospermum halicacabum</i>)	4 per pound
(c) Bermudagrass (<i>Cynodon</i> spp.)	300 per pound
(d) Blessed thistle (<i>Cnicus benedictus</i>)	9 per pound
(e) Buckhorn plantain (<i>Plantago lanceolata</i>)	100 per pound
(f) Canada thistle (<i>Cirsium arvense</i>)	100 per pound
(g) Cheat or Chess (<i>Bromus secalinus</i> , and/or commutatus)	300 per pound
(h) Cocklebur (<i>Xanthium</i> spp.)	4 per pound
(i) Corncockle (<i>Agrostemma githago</i>)	100 per pound
(j) <i>Crotalaria</i>	
1. <i>Crotalaria spectabilis</i>	9 per pound
2. <i>Crotalaria mucronata</i> (<i>Striata</i>)	54 per pound
(k) Darnel (<i>Lolium temulentum</i>)	100 per pound
(l) Docks (<i>Rumex crispus</i> , <i>obtusifolius</i> and <i>conglomeratus</i>)	100 per pound
(m) Dodders (<i>Cuscuta</i> spp.)	100 per pound
(n) Horsenettle and Nightshades (<i>Solanum carolinense</i> and/or <i>elaeagnifolium</i>)	100 per pound
(o) Johnson grass and <i>Sorghum almum</i> (<i>Sorghum halepense</i> and/or <i>almum</i>)	27 per pound
<u>(p) Nutgrass (<i>Cyperus rotundus</i>)</u>	<u>1 per pound</u>
<u>(q) (p) Quack grass (<i>Agropyron repens</i>)</u>	100 per pound
<u>(r)(q) Red rice (<i>Oryza sativa</i>)</u>	300 per pound
<u>(s) (r) Sheep sorrel (<i>Rumex acetosella</i>)</u>	200 per pound
<u>(t) Tropical soda apple (<i>Solanum viarum</i>)</u>	<u>1 per pound</u>
<u>(u) (s) Texas millet (<i>Panicum texanum</i>) Buffalograss</u>	9 per pound
<u>(v) (t) Wild onions (<i>Allium</i> spp.)</u>	27 per pound
<u>(w) (u) Wild radish (<i>Raphanus raphanistrum</i>)</u>	27 per pound
<u>(x) (v) Wild turnip or mustard (<i>Brassica</i> spp.)</u>	27 per pound

(3) The total amount of all restricted noxious weed seed shall not exceed three hundred (300) per pound exclusive of Annual bluegrass.

Specific Authority 570.07(23), 578.11(2) FS. Law Implemented 578.11(3), 578.12 FS. History—Amended 5-30-63, 8-22-68, 9-29-83, Formerly 5E-4.03, Amended 8-6-89, 11-14-04, _____-08.

5E-4.0041 Disposition of Seed Contaminated with Noxious Weed Seed.

(1) Seed lots containing one or more of the noxious weed seeds listed in Rule 5E-4.003, F.A.C., and found by the department to be in violation of Section 578.13, Florida Statutes, and which have been placed under stop-sale, stop-use, removal, or hold order, shall not be further

subdivided or renumbered such that the integrity of the lot for identification and further inspection and testing is maintained. Within 30 days of receipt of the stop-sale, stop-use, removal, or hold order issued by the department, the owner of the seed lot shall arrange for the relabeling, reprocessing, or destruction through incineration or burial of the seed to a depth of at least 3 feet for a period of at least one year, in a solid waste disposal facility for which a permit has been issued or that is exempt from the permit requirement as specified under Rule 62-701.320, F.A.C. (Effective 5-27-01), Solid Waste Management Facilities.

(2) Seed lots which have been reprocessed shall be re-inspected and re-tested by the department to determine if the violation of Section 578.13, Florida Statutes, has been corrected. If, after subsequent inspection and testing, the violation of Section 578.13, Florida Statutes, has ~~not~~ been corrected, the department shall issue a release (Release Notice Form DACS-13248 Rev. 07/08), for the lot under stop-sale, stop-use, removal, or hold order and the seed lot may be sold and distributed upon relabeling. If, after two consecutive attempts to reprocess the seed lot, the seed lot continues to contain ~~one or more of the~~ excessive noxious weed seeds as listed in Rule 5E-4.003, F.A.C., the seed lot under stop-sale, stop-use, removal, or hold order shall be destroyed by incineration or burial to a depth of at least three feet for a period of at least 1 year. ~~in a solid waste disposal facility for which a permit has been issued or that is exempt from the permit requirement as specified under Rule 62-701.320, F.A.C. (Effective 5-27-01), Solid Waste Management Facilities. If none of the noxious weed seeds listed in Rule 5E-4.003, F.A.C., are detected during subsequent inspection and testing, the department shall issue a release for the lot under stop sale, stop use, removal, or hold order and the seed lot may be sold and distributed. Upon release of the stop-sale, stop-use, removal, or hold order, the seed lot may be further subdivided or assigned one or more new lot numbers.~~

(3) Any seed lot found to contain the restricted noxious weed seed Tropical Soda Apple, *solanum viarum*, at a rate of one seed per pound shall be labeled, in addition to the requirements listed in section 578.09, Florida Statutes, with the following information:

(a). Included on the label “Noxious Weed Seed.....1 Tropical Soda Apple per pound;

(b). plainly printed in red ink affixed in a permanent manner on the container in a size 16 font ~~no less than the largest font utilized on the existing container~~: “Seed in this container has been determined by laboratory analysis to be contaminated with the noxious weed Tropical Soda Apple at a rate of one seed per pound. This seed is only for distribution, sale, or planting within the State of Florida. Purchaser of this seed should follow the recommendations in the document SS-AGR-130 “Management Practices to Control Tropical Soda Apple” to prevent the establishment and spread of this noxious weed. Copies of this document can be obtained at your local UF/IFAS Extension Offices or found online at <http://edis.ifas.ufl.edu/UW188>.”

(c) Documentation (such as delivery ticket or invoice) of sale or distribution of seed lots labeled to contain one tropical soda apple seed per pound shall be submitted to the Department’s Seed Compliance Section immediately upon subsequent movement or distribution of seed.

(d) The IFAS document SS-AGR-130 “Management Practices to Control Tropical Soda Apple” is hereby adopted and incooperated by reference and can be found on-line at <http://edis.ifas.ufl.edu/UW188>.

History—Amended 5-30-63, 8-22-68, 9-29-83, Formerly 5E-4.03, Amended 8-6-89, 11-14-04, 5E-4.004 - 578.11(3), 578.12 FS. History—New 11-14-04; _____-08.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Weldon Collier

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr.

Anderson H. “Andy” Rackley

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: _____

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: 04/04/08