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BILLING CODE:

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2015-0096]

The Scotts Co. and Monsanto Co.; Notice of Intent to Prepare an Environmental Impact Statement for Determination of Nonregulated Status of Glyphosate-Resistant Creeping Bentgrass

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are announcing that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement (EIS) to evaluate the environmental impacts that may result from the approval of a new petition for nonregulated status of glyphosate-resistant creeping bentgrass (*Agrostis stolonifera* L.) (event ASR368) from The Scotts Company and Monsanto Company following withdrawal of their 2003 petition. Issues to be addressed in the EIS include the potential environmental impacts to managed natural and non-agricultural lands, agricultural production systems, the physical environment, biological resources, human health, socioeconomics, federally listed threatened or endangered species, and cultural or historic resources. This notice of intent (NOI) replaces a previous NOI published in September 2004 and initiates a fresh public scoping process and stakeholder engagement for the purpose of preparing an EIS. We are requesting public comments to further frame the scope of the issues to be included in the EIS, including alternatives and environmental impacts.

DATES: We will consider all comments that we receive on or before [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0096>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2015-0096, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0096> or in our reading room, which 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) 799-7039 before coming.

Other Information: We have retained the public comments submitted in response to previous notices on this subject. Due to the amount of time that has passed since these comments were originally submitted, some of the comments may need to be updated with newer information. These earlier comments will be assessed as long as they reflect conditions in the current agricultural and natural environment and are relevant to issues studied in the environmental impact statement (EIS). We welcome new submissions offering scientific facts, professional observations, and perspectives about how to evaluate any new material available for analysis in the EIS.

FOR FURTHER INFORMATION CONTACT: Dr. Sidney Abel, Assistant Deputy Administrator, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1238; (301) 851-3896, email: [Sidney.w.abel@aphis.usda.gov](mailto:Sidney.w.abel@aphis.usda.gov). To obtain

copies of the petition, contact Ms. Cindy Eck at (301) 851-3882, email: cynthia.a.eck@aphis.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the authority of the plant pest provisions of the Plant Protection Act (PPA), as amended (7 U.S.C. 7701 et seq.), the regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in 7 CFR 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS received a new petition from The Scotts Company (Scotts) and Monsanto Company (Monsanto), APHIS Petition Number 15-300-01p, seeking a determination of nonregulated status for creeping bentgrass (*Agrostis stolonifera* L.) that is resistant to glyphosate, identified as event ASR368 or Roundup Ready<sup>®</sup> creeping bentgrass. The petition states that this regulated article is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340. These part 340 regulations are authorized

by the PPA to prevent the introduction or dissemination of plant pests, and the decision on whether or not to approve the petition request will be based on this standard.

A total of six notices have been published in the Federal Register related to the current and previous petition. The first notice<sup>1</sup>, published on January 5, 2004, advised the public of receipt of petition 03-104-01p and solicited comments from the public on the petition. The second notice<sup>2</sup>, published on September 24, 2004, announced APHIS' intent to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.) to provide the Agency with a review and analysis of potential environmental impacts associated with the petition request. The third notice<sup>3</sup>, published on November 18, 2004, reopened the comment period on the second notice and announced APHIS' intent to hold a public meeting to promote further public involvement in the development of the EIS. On April 11, 2005, a fourth notice<sup>4</sup> invited the public to attend public EIS scoping sessions in May 2005 in Maryland and Oregon. The fifth notice<sup>5</sup>, published on October 12, 2005, requested information from the public on glyphosate use and weed management in nonagricultural lands. The sixth notice<sup>6</sup> published on January 8, 2016, advised the public of receipt of the current petition (15-300-01p) and solicited comment from the public, including comments related to the environmental impacts associated with the potential deregulation. APHIS received 168 comments during the 60-day comment period from a variety

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<sup>1</sup> Docket No. 03-101-1 published on January 5, 2004, Vol. 69 No. 2;  
[http://www.aphis.usda.gov/brs/fedregister/BRS\\_20040105a.pdf](http://www.aphis.usda.gov/brs/fedregister/BRS_20040105a.pdf).

<sup>2</sup> Docket No. 03-101-2 published on September 24, 2004, Vol. 69 No. 185;  
[http://www.aphis.usda.gov/brs/fedregister/BRS\\_20040924a.pdf](http://www.aphis.usda.gov/brs/fedregister/BRS_20040924a.pdf).

<sup>3</sup> Docket No. 03-101-3 published on November 18, 2004, Vol. 69 No. 222;  
[http://www.aphis.usda.gov/brs/fedregister/BRS\\_20041118a.pdf](http://www.aphis.usda.gov/brs/fedregister/BRS_20041118a.pdf).

<sup>4</sup> Docket No. 03-101-4 published on April 11, 2005, Vol. 70 No. 68;  
[http://www.aphis.usda.gov/brs/fedregister/BRS\\_20050411a.pdf](http://www.aphis.usda.gov/brs/fedregister/BRS_20050411a.pdf).

<sup>5</sup> Docket No. 03-101-5 published on October 12, 2005, Vol. 70 No. 196  
[http://www.aphis.usda.gov/brs/fedregister/BRS\\_20051012a.pdf](http://www.aphis.usda.gov/brs/fedregister/BRS_20051012a.pdf).

<sup>6</sup> Docket No. APHIS-2015-0096 published on January 8, 2016, Vol. 81, No. 5  
<https://www.regulations.gov/docket?D=APHIS-2015-0096>.

of stakeholders. These comments can be viewed on Regulations.gov (see ADDRESSES above). In total, more than 1,000 comments were submitted to APHIS during the public comment periods and at the public meetings.

Creeping bentgrass is a perennial outcrossing species, thus major issues raised by commenters focused on plant biology and agronomic consequences of it outcrossing to weedy species that may impact agriculture and/or natural ecosystems. Issues raised specifically included the distribution of seed and pollen from creeping bentgrass, hybridization with native or naturalized species, the need for additional chemicals to control glyphosate-resistant grass species that may develop due to hybridization with creeping bentgrass, increased weediness, the ability of creeping bentgrass to establish without cultivation, potential impacts on agricultural irrigation canals, and the development of herbicide-resistant weeds.

APHIS published a preliminary risk assessment<sup>7</sup> as part of its evaluation of the petition request under 7 CFR part 340 and also a white paper<sup>8</sup> to support the preliminary risk assessment, providing a summary of the biology and ecology of creeping bentgrass. These documents were published in 2005 and 2006, respectively. The preliminary risk assessment concluded that there is a possibility that ASR368 or hybrids of ASR368 could become established in various urban or rural and natural areas. At the time the preliminary risk assessment was written, there were at least 13 naturalized or native species with which creeping bentgrass could hybridize in the United States. The white paper presented biological and ecological information on creeping bentgrass, including its distribution in the United States and Canada, and the ability for it to form hybrids by natural interspecific crosses or potentially do so. APHIS will further investigate in the EIS whether or not there are any additional species that hybridize with A. stolonifera and

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<sup>7</sup> [http://www.aphis.usda.gov/brs/aphisdocs/03\\_10401p\\_ra.pdf](http://www.aphis.usda.gov/brs/aphisdocs/03_10401p_ra.pdf).

<sup>8</sup> [http://www.aphis.usda.gov/peer\\_review/downloads/cbg-wpFinal.pdf](http://www.aphis.usda.gov/peer_review/downloads/cbg-wpFinal.pdf).

associated environmental impacts. APHIS will review the 2005 preliminary risk assessment, updating it to reflect changes in turfgrass science and the current document standards of APHIS.

To fulfill its section 7 requirements under the Endangered Species Act, APHIS entered into consultation with the U.S. Fish and Wildlife Services (USFWS) on the first petition (03-104-01p). Subsequent to the withdrawal of the petition in September 2015, APHIS notified the USFWS that it was terminating the consultation on the petition. Information provided during the comment period on this notice of intent (NOI) will be used to update APHIS' assessment of the effects on threatened and endangered species and critical habitat (collectively referred to as listed resources) and, as appropriate and required by statute, will be shared with the USFWS as part of APHIS' commitment to protect listed resources. If APHIS enters into formal consultation, the USFWS will make a determination about whether nonregulated status of ASR368 will jeopardize the continued existence of federally listed plant and animal species.

Under NEPA, Federal agencies must examine the potential environmental impacts of proposed major Federal actions significantly affecting the quality of the human environment before taking that action. In accordance with NEPA, the regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), USDA regulations implementing NEPA (7 CFR part 1b), and APHIS' NEPA Implementing Procedures (7 CFR part 372) require that for each submitted petition, APHIS consider the potential environmental impacts of a request for nonregulated status either by preparing an environmental assessment (EA) or an EIS. APHIS has decided to prepare an EIS to better understand the degree of uncertainty for environmental impacts associated with the deregulation of ASR368. This uncertainty is primarily related to four issues that will be studied in the EIS: (1) Potential for hybridization and introgression, (2) management of volunteer

ASR368, (3) potential effects on weed management practices, and (4) potential inter-related trade and economic impacts. The EIS will examine the broad and cumulative environmental impacts of the requested deregulation of ASR368, including potential impacts of the proposed action on the human environment and alternative courses of action.

#### Alternatives

The Federal action being considered is whether to approve the petition for nonregulated status of ASR368. This notice identifies reasonable alternatives and potential issues that may be studied in the EIS. We are requesting public input and comment on the range of alternatives, and on the environmental impacts and issues stated in this NOI as well as suggestions for additional alternatives for consideration and new impacts or issues to be evaluated in the EIS for the petition.

The EIS will consider a range of reasonable alternatives. APHIS is currently considering two alternatives: (1) Take no action, i.e., APHIS would not change the regulatory status of the glyphosate-resistant creeping bentgrass event ASR368 and such plants would continue to be regulated articles, or (2) approve the petition for determination of nonregulated status of ASR368.

#### Environmental Issues for Consideration

We have identified the following potential environmental issues for consideration in the EIS: Impacts on managed natural and non-agricultural lands; on agricultural production systems; on the physical environment; on biological resources; on human health; on socioeconomic issues; on federally listed threatened or endangered species; and on cultural or historic resources. In addition to providing input and comment on these issues, we are also requesting that the public provide information on the following questions during the comment period:

### Potential for Hybridization and Introgression

- What are the weed species in potential affected environments with which ASR368 may hybridize and introgress? What evidence is there that this would or could occur?
- If introgression was to occur, would the inability to identify introgression of ASR368 lead to stand failures or increasing costs for production of grass seed crops when compared to non-genetically engineered (non-GE) creeping bentgrass? What evidence is there that would support stand failure or increased costs.

### Management of Volunteer ASR368

- Compared to non-GE creeping bentgrass and other grasses, would deregulation of ASR368 result in its establishment and persistence in situations where it is unwanted, unintended, or unexpected (e.g., agricultural irrigation canals, habitat restoration, riparian areas, wetlands, or grasslands)?
- When compared to non-GE creeping bentgrass, could the spread of ASR368 or its relatives to areas where it is unwanted, unintended, or unexpected potentially result in adverse effects on native species or habitats, including threatened and endangered species and their habitats? What supporting information is available to conclude an adverse effect?

### Potential Effects on Weed Management Practices

- Would the presence of volunteer ASR368 increase the costs and complexity of weed control for growers of non-GE creeping bentgrass and other crops? What evidence is there to support this conclusion?
- What potential changes of agronomic practices may occur as a result of the presence of ASR368 agricultural crops, including crop rotation practices, herbicide use, and tillage?

### Potential Trade and Economic Impacts

- What potential impacts on GE-free grass seed exports could result from the presence of ASR368?
- What potential impacts on conventional and organic crops could result from the presence of ARS368?

Comments that identify other issues or alternatives that should be considered for examination in the EIS would be especially helpful. All comments received during the scoping period will be carefully considered in developing the final scope of the EIS. Upon completion of the draft EIS, a notice announcing its availability and an opportunity to comment on it will be published in the Federal Register.

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 27<sup>th</sup> day of July 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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