motions to reopen or reconsider concurrently with applications for the relief from deportation. Therefore, this rule does not have a significant economic impact on a substantial number of small entities. The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 242

Administrative practice and procedure, Aliens.

Accordingly, chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Subpart C—Rules of Procedure for Immigration Judge Proceedings

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362, 1362; 28 U.S.C. 509, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR 1949–1953 Comp., p. 1002.

2. In § 3.31, paragraph (b) is amended by revising the first sentence to read as follows:

§ 3.31 Filing documents and applications.

* * * * *

(b) Except as provided in 8 CFR 242.17(e), all documents or applications requiring the payment of a fee must be accompanied by a fee receipt from the Service or by an application for a waiver of fees pursuant to 8 CFR 3.24. * * *

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701, E.O. 12356, 47 FR 14874; 15557; 3 CFR, 1982, Comp., p. 166; 8 CFR part 2.

4. In § 103.7, paragraph (b)(1) is amended by revising the two entries for ''Motion'', respectively, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals has appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable. (The fee of $110 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the fee of $110 will be charged when the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)—$110.

Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable. (The fee of $110 shall be charged whenever an appeal or motion is filed by on or behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the fee of $110 will be charged when the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)—$110.

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

5. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1524, 1362; 8 CFR , part 2.

6. In § 242.17, paragraph (e) is amended by adding two new sentences after the 4th sentence, to read as follows:

§ 242.17 Ancillary matters, applications.

* * * * *

(e) * * * When a motion to reopen or reconsider is made concurrently with an application for relief seeking one of the immigration benefits set forth in paragraphs (a) and (c) of this section, only the fee set forth in § 103.7(b)(1) of this chapter for the motion must accompany the motion and application for relief. If such a motion is granted, the appropriate fee for the application for relief, if any, set forth in 8 CFR 103.7(b)(1), must be paid within the time specified in order to complete the application.* * *

Dated: August 26, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–22335 Filed 8–30–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 95F–0160]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of peroxyacetic acid, acetic acid, hydrogen peroxide and 1-hydroxyethylidene-1,1-diphosphonic acid (HEDP) to reduce the microbial load in water used to wash certain fruits and vegetables. Elsewhere in this issue of the Federal Register, FDA is publishing a document that provides for the safe use of a mixture of peroxyacetic acid, acetic acid, and hydrogen peroxide

to reduce the microbial load in water used to wash certain fruits and vegetables. This action is in response to a petition filed by Ecolab Inc.

DATES: Effective September 3, 1996; written objections and requests for a hearing by October 3, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3072.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 13, 1995 (60 FR 36150), FDA announced that a food additive petition (FAP 5A4460) had been filed by Ecolab Inc., 370 North Wabasha St., St. Paul, MN 55102. The petition proposed to amend the food additive regulations in § 173.315 *Chemicals used in washing or to assist in the lye peeling of fruits and vegetables* (21 CFR 173.315) to provide for the safe use of a mixture of peroxyacetic acid, acetic acid, hydrogen peroxide and 1-hydroxyethylidene-1,1-diphosphonic acid (HEDP) to control microbial growth in water contacting fruits and vegetables.

An antimicrobial solution used to wash fruits and vegetables is potentially subject to regulation as a food additive under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348), or as a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136(u)), depending upon the status of the fruit or vegetable. FDA regulates antimicrobial solutions as food additives under the act when such solutions are used on processed food. The Environmental Protection Agency (EPA) regulates antimicrobial solutions as pesticide chemicals under FIFRA when the solutions are used on raw agricultural commodities.

Under section 201(q)(1) of the act (21 U.S.C. 321(q)(1)), as amended by the Food Quality Protection Act of 1996, the term ''pesticide chemical'' means a pesticide as defined in FIFRA. Under FIFRA's regulatory scheme, an antimicrobial solution used on or in processed food does not come within the definition of the term pesticide. FIFRA defines a pesticide as any substance intended for preventing, destroying, repelling, or mitigating any pest (7 U.S.C. 136(u)); the definition of pest includes ''fungus'' (7 U.S.C. 136(t)). However, excluded from the definition of fungus are rust, smut, mildew, mold, yeast, and bacteria on or in processed food (7 U.S.C. 136(k)). Therefore, by definition, an antimicrobial solution used on or in processed food is not a pesticide because it does not prevent, destroy, repel, or mitigate a ''pest,'' within the meaning of that term (7 U.S.C. 136(t)). Thus, such a solution is not a pesticide chemical under the act.

FDA received one comment in response to the notice of filing of this petition. The comment expressed concern that the chemical mixture appeared to be a biocide and may require FIFRA pesticide registration. The comment also stated that the preparation would be regulated more accurately under § 178.1010 *Sanitizing solutions* (21 CFR 178.1010). Lastly, the comment stated that one of the components of the mixture contained phosphoric acid, which needed to be declared as an ingredient.

As noted above, an antimicrobial formulation used on raw agricultural commodities is regulated as a pesticide chemical and thus, may require registration, under FIFRA, as well as a tolerance established under section 408 of the act (21 U.S.C. 346a). Similarly, FDA has jurisdiction over antimicrobial solutions used on processed foods. Thus, consistent with FDA's jurisdiction, FDA's approval of this formulation is limited to its use in washing fruits and vegetables other than those that are raw agricultural commodities. This approval is consistent with the division of responsibility between FDA and EPA over solutions of this type. FDA has, however, referred the petitioner to EPA in order to ascertain whether FIFRA pesticide registration and a tolerance under section 408 of the act are required for any uses not regulated by FDA. Thus, FDA's decision in this final rule takes into consideration the jurisdictional question between FDA and EPA raised by the comment.

FDA disagrees with the comment to the extent that it suggests that the solution in question should be regulated as a sanitizing solution. FDA notes that this formulation is presently approved for use as a sanitizing solution, under § 178.1010(b)(30). However, the petitioned use for this formulation is to reduce the microbial load in water used to wash fruits and vegetables, consistent with the technical effect listed in 21 CFR 170.3(o)(2). This use is different from its use as a sanitizing solution. Because the petitioned conditions of use differ from those for a sanitizing solution, approval under § 173.315 is necessary and appropriate. The point of this comment is not entirely clear. To the extent that this comment suggests that the solution is not safe for use as a washing solution for fruits and vegetables, the agency has determined that the petitioned use is safe. To the extent that the comment suggests that the solution should be regulated as a sanitizing solution under § 178.1010, the comment is meaningless because the solution is already approved for such use (§ 178.1010(b)(30)).

Finally, the agency disagrees with the comment to the extent that it asserts that one of the components of the mixture contains phosphoric acid, which should be considered an ingredient. Importantly, there is no phosphoric acid in the formulation and thus there is no need to consider it as an ingredient. Commercial HEDP does contain a low level (approximately 3 percent by weight) of phosphorous acid, not phosphoric acid (Ref. 1), which is used as a reactant in the preparation of HEDP. The agency has evaluated the level of phosphorous acid in HEDP and concludes that essentially no residue of phosphorous acid would remain on treated produce and that this use of HEDP is safe. Because this antimicrobial solution contains no phosphoric acid, FDA finds no merit in the comment stating that phosphoric acid needs to be disclosed as an ingredient.

FDA has evaluated data in the petition and other relevant material. As part of its review, FDA evaluated the safety of each of the components of the antimicrobial solution. Based on this information, the agency concludes that the proposed use of the additive is safe, that it will achieve its intended technical effect of reducing the microbial load in water used to wash fruits and vegetables, and that therefore, the regulations in § 173.315 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence

supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 3, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Monsanto Material Safety Data Sheet for Monsanto Product Name DEQUEST 2010 DEFLOCCULANT and SEQUESTRANT.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

2. Section 173.315 is amended in the table in paragraph (a)(2) by alphabetically adding a new entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 173.315 Chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

* * * * *

(a) * * *

(2) * * *

Substances	Limitations
* * *	* * * *
1-Hydroxyethylidene-1,1-diphosphonic acid.	May be used only with peroxyacetic acid. Not to exceed 4.8 ppm in wash water. Limited to use on fruits and vegetables that are not raw agricultural commodities.
* * *	* * * *

* * * * *

Dated: August 26, 1996.

Fred A. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–22286 Filed 8–30–96; 8:45 am]

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21 CFR Part 173

[Docket No. 95F–0161]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of peroxyacetic acid, acetic acid, and hydrogen peroxide to reduce the microbial load in water used to wash certain fruits and vegetables. Elsewhere in this issue of the Federal Register, FDA is also publishing a document that provides for the safe use of a mixture of peroxyacetic acid, acetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid (HEDP) to reduce the microbial load in water used to wash certain fruits and vegetables. This action is in response to a petition filed by Ecolab Inc.

DATES: Effective September 3, 1996; written objections and requests for a hearing by October 3, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3072.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 13, 1995 (60 FR 36150), FDA announced that a food additive petition (FAP 5A4459) had been filed by Ecolab Inc., 370 North Wabasha St., St. Paul, MN 55102. The petition proposed to amend the food additive regulations in § 173.315 *Chemicals used in washing or to assist in the lye peeling of fruits and vegetables* (21 CFR 173.315) to provide for the safe use of a mixture of peroxyacetic acid, acetic acid and hydrogen peroxide to control microbial growth in water contacting fruits and vegetables.

An antimicrobial solution used to wash fruits and vegetables is potentially subject to regulation as a food additive under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348), or as a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136(u)), depending upon the status of the fruit or vegetable. FDA regulates antimicrobial solutions as food additives under the act when such solutions are used on processed food.