

# Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Doc. No. ST04-04]

#### Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides; Section 610 Review

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Confirmation of regulations.

**SUMMARY:** This document summarizes results of an Agricultural Marketing Service (AMS) review of regulations pertaining to Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides, which requires certified applicators to maintain records of restricted use pesticide applications, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA). Based on its review, AMS has determined that the regulations should be continued without change.

**ADDRESSES:** Interested persons may obtain a copy of the review. Request for copies should be sent to Pesticide Records Branch, Science and Technology, AMS, USDA, 8609 Sudley Road, Suite 203, Manassas, Virginia 20110-4582; Fax: (703) 330-6110 or e-mail: [amspesticide.records@usda.gov](mailto:amspesticide.records@usda.gov) or [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Bonnie Poli, Pesticide Records Branch, AMS, USDA, 8609 Sudley Road, Suite 203, Manassas, Virginia 20110-4582; telephone (703) 330-7826; Fax: (703) 330-6110; or e-mail: [bonnie.poli@usda.gov](mailto:bonnie.poli@usda.gov).

**SUPPLEMENTARY INFORMATION:** "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides", as amended (7 CFR part 110) require certified pesticide applicators to maintain records of federally restricted use

pesticide applications for a period of 2 years. The regulations also provide for access to pesticide records by Federal or State designated agencies, or access to record information by licensed health care professionals when needed to treat an individual who may have been exposed to restricted use pesticides, and penalties for enforcement of the recordkeeping and access provisions. The regulations were implemented under the authority of the Food, Agriculture, Conservation, and Trade Act of 1990, (Pub. L. 101-624; 7 U.S.C. 136i-1).

AMS initially published in the **Federal Register** (February 18, 1999 (63 FR 8014)) its plan to review certain regulations, including the "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides", under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; U.S.C. 601-612). An updated plan was published in the **Federal Register** on August 14, 2003 (68 FR 48574). Because many AMS regulations impact small entities, AMS has decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. AMS published a notice of review and request for written comments on the Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides in the **Federal Register** May 2, 2003 (68 FR 23439). During the comment period, three written comments in support of the regulations were received. The comments were received from the National Cotton Council of America, National Corn Growers Association and the Michigan Department of Agriculture.

The AMS review was undertaken to determine whether the regulations, "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides", should be continued without change, amended, or rescinded to minimize the impacts on small entities. In conducting the review, AMS considered the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other

Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

All three parties who commented stated that the current recordkeeping requirements were sufficient as written and the requirements of the regulations do not impose a burden that is too complex for the pesticide applicators to understand and follow. In addition, the Michigan Department of Agriculture stated, "the program continues to offer agricultural producers, workers and the department a flexible method by which pesticide application records can be maintained and accessed as needed."

The regulations were established to provide accurate data on the actual use of restricted use pesticides both in the agricultural and non-agricultural areas. Due to the requirement to maintain restricted use pesticide records, the National Agricultural Statistics Service (NASS) has been able to collect accurate information from agricultural producers through their voluntary surveys. NASS has stated that the data collected is more accurate due to applicators referring to actual records when surveyed. In today's atmosphere, where there are efforts to expand trade internationally and there is the need to monitor the food supply as part of homeland security, maintaining records on restricted use pesticides applied to agricultural products is important for producers.

Additionally, the regulations require access to restricted use pesticide records when needed for purposes of medical treatment. AMS reviewed the Worker Protection Standards (WPS) put into place by EPA in 1994 to determine if there was a duplication of requirements between the two regulations. WPS provides for the posting of application information for both restricted and general use pesticides for worker safety. WPS does not require the information be maintained past the period of time required for posting. In addition, the WPS covers only agricultural production which uses agricultural labor. Therefore, AMS determined that although similar to the Federal pesticide recordkeeping regulations, WPS does not replace the need for the regulations.

Based on its review, AMS has determined that the "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides" should be continued without change.

AMS did not receive any complaints or negative comments regarding the program or the regulations during the comment period of the Section 610 review. The regulations are not complex and AMS has provided flexibility to certified applicators on methods to maintain the pesticide application records. The program has not mandated any set form of recordkeeping system; therefore, certified applicators are free to select a recordkeeping system that suits their needs. AMS has supported educational outreach programs and has provided materials to the regulated community since early 1993 in order to boost compliance with the regulations. To reduce the burden on small entities, AMS has evaluated the current State pesticide regulatory programs to identify regulations requiring restricted use pesticide application records and determined if they are comparable to the Federal regulations. For those States that have comparable regulations, AMS deems the State recordkeeping requirements equivalent to the Federal regulations. This allows certified pesticide applicators to maintain the records under the State regulations and eliminates duplicate pesticide application record requirements.

AMS will continue to work with its State cooperators and the regulated communities to assure the intent of the Federal Pesticide Recordkeeping regulations are carried out with minimum burden on the entire regulated community.

Dated: May 17, 2004.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 04-11516 Filed 5-20-04; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 04-012-2]

#### Availability of Environmental Assessment and Finding of No Significant Impact for Field Test of Genetically Engineered Organism

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an environmental assessment and

finding of no significant impact have been prepared relative to the issuance of a permit to allow the confined field testing of genetically engineered nonpathogenic (avirulent) strains of a bacterium, *Erwinia amylovora*, the causal agent of fire blight disease. The environmental assessment provides a basis for our conclusion that this field test will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared for this field test.

**DATES:** *Effective Date:* May 11, 2004.

**ADDRESSES:** You may read the environmental assessment and finding of no significant impact and the comment received on an earlier notice of availability in our reading room. 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.

You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Cordts, BRS, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-5531. To obtain a copy of the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734-4885; e-mail: [Kay.Peterson@aphis.usda.gov](mailto:Kay.Peterson@aphis.usda.gov). The environmental assessment and finding of no significant impact are also available on the Internet at [http://www.aphis.usda.gov/brs/aphisdocs/03\\_27901r\\_ea.pdf](http://www.aphis.usda.gov/brs/aphisdocs/03_27901r_ea.pdf).

**SUPPLEMENTARY INFORMATION:** 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." A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

On October 6, 2003, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 03-279-01r) from Oregon State University, Corvallis, OR, for a permit to field test avirulent strains 153 HrpS- and 153 HrpL- of the bacterial pathogen, *Erwinia amylovora*, the causal agent of fire blight disease, on apple and pear trees in Benton and Jackson Counties, OR.

APHIS published a notice in the **Federal Register** on March 22, 2004 (69 FR 13280-13281, Docket No. 04-012-1), announcing the availability for public comment of an environmental assessment (EA) for the proposed confined field test of genetically engineered avirulent strains of *Erwinia amylovora*. Comments were to have been received by APHIS on or before April 21, 2004. APHIS received one comment on the EA during the designated comment period. The comment, which was from a private individual, simply stated that the organism to be tested was worse than the nonengineered fire blight and that the engineered strains were not safe, without reference to any supporting data or information. APHIS evaluated the safety of the engineered avirulent strains of *Erwinia* in the EA, and we have responded to this comment in an attachment to the finding of no significant impact (FONSI), which is available as indicated under **FOR FURTHER INFORMATION CONTACT**. The avirulent strains of *E. amylovora* have been genetically engineered using the neomycin phosphotransferase (*nptII*) gene of transposon 10 from *Escherichia coli* strain DH5 $\alpha$  and the *hrp* gene from *E. amylovora* strain Ea321. Insertion of the transposon within the coding region of the *E. amylovora* *hrp* gene results in inactivation of the gene and disruption of the disease-causing mechanism within the bacterium, thereby rendering the bacterium nonpathogenic or avirulent. Use of the *nptII* gene also confers resistance to the antibiotic kanamycin, which is used as a marker for the avirulent strains. The introduction of the avirulent strains, alone and in combination with other