

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.

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## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

October 3, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

#### Agricultural Marketing Service

*Title:* Dried Prunes Produced in California—Dried Prune Handler Compensation Survey.

*OMB Control Number:* 0581-0208.

*Summary of Collection:* Marketing Orders (Orders) and Agreements (Agreements) covering the respective commodities emanate from the Agricultural Marketing Agreement Act of 1937, Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674. This regulation, hereinafter referred to as the Act, was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to producers. The Act provides in section 608(d)(1) that information necessary to determine the extent to which an order has effectuated the declared policy of the Act shall be furnished at the request of the Secretary of Agriculture (Secretary). Under the Prune Marketing Order, handlers are compensated for such costs as inspection, receiving, storing, grading and fumigation of reserve prunes held for the account of the Prune Marketing Committee. A formula has been established in the administrative rules and regulations that allow the Committee to compute the level of handler payments that reflect current industry costs. The Committee will obtain current industry costs through surveys of dried prune handlers, and average costs will be computed based on the number of handlers participating in the survey and the compensation rate will be updated based on the survey.

*Need and Use of the Information:* When volume regulations are in effect, the survey is filled out by handlers on a voluntary basis to inform the Prune Marketing Committee of their costs associated with inspection, receiving, storing, grading, handling and fumigation, as well as other costs.

*Description of Respondents:* Business or other for-profit; farms.

*Number of Respondents:* 22.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Annually.

*Total Burden Hours:* 6.

#### Agricultural Marketing Service

*Title:* Dried Prunes Produced in California—Prune Dehydrator Survey.

*OMB Control Number:* 0581-0211.

*Summary of Collection:* Marketing Orders (Orders) and Agreements (Agreements) covering the respective commodities emanate from the Agricultural Marketing Agreement Act of 1937, Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674. This regulation, hereinafter referred to as the Act, was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to producers. Under the Prune Marketing Order, prune producers may participate in a voluntary prune plum diversion program, when a reserve pool is implemented. Under this program, prune producers can elect to divert part of their prune plum crop from normal prune or prune product markets. Because dry-away ratios are the basis for computing the dried weight equivalent of diverted fresh prune plums, and those currently established are outdated, the Prune Marketing Committee will obtain current dry-away ratios through a voluntary survey submitted by commercial prune dehydrators, when the program is implemented.

*Need and Use of the Information:* The commercial prune dehydrators inform the Committee of their annual dry-away ratios for the preceding five years by completing this survey. The Prune Marketing Committee will use the information to average those ratios and compute a five-year average dry-away ratio for each producing region, and apply that ratio to diverted prune plums in those regions. The information to be provided is on a voluntary basis and includes the most recent six years of dry-away ratios for each commercial prune dehydrator owned or operated, the dehydrator location, the county(ies) where the dehydrator receives prunes, and in cases of dehydrators receiving prunes from multiple counties, the estimated percentage of production each county supplies to the dehydrator.

*Description of Respondents:* Business or other for-profit; farms.

*Number of Respondents:* 17.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; annually.

Total Burden Hours: 5.

Charlene Parker,

Departmental Information Collection  
Clearance Officer.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 04-113-2]

#### Mycogen Seeds/Dow AgroSciences LLC and Pioneer Hi-Bred International Inc.; Availability of Determination of Nonregulated Status for Genetically Engineered Corn

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

**ACTION:** Notice.

**SUMMARY:** We are advising the public of our determination that the Mycogen Seeds/Dow AgroSciences LLC and Pioneer Hi-Bred International Inc. corn designated as corn line DAS-59122-7, which has been genetically engineered for resistance to a corn rootworm complex and for tolerance to the herbicide glufosinate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Mycogen Seeds/Dow AgroSciences LLC and Pioneer Hi-Bred International Inc. in their petition for a determination of non-regulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice announcing the availability of the petition for nonregulated status and an environmental assessment. This notice also announces the availability of our written determination and our finding of no significant impact.

**DATE:** Effective September 23, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael Watson, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-0486; e-mail: [michael.t.watson@aphis.usda.gov](mailto:michael.t.watson@aphis.usda.gov). To obtain copies of the petition or, the determination, the environmental assessment (EA), or the finding of no significant impact (FONSI) contact Ms. Ingrid Berlinger at (301) 734-4885; e-mail: [ingrid.e.berlinger@aphis.usda.gov](mailto:ingrid.e.berlinger@aphis.usda.gov). The petition and the EA, including the FONSI and determination, are also available on the Internet at <http://www.aphis.usda.gov/brs/aphisdocs/>

[03\\_35301p.pdf](http://03_35301p.pdf) and [http://www.aphis.usda.gov/brs/aphisdocs/03\\_35301p\\_ea.pdf](http://www.aphis.usda.gov/brs/aphisdocs/03_35301p_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."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) 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.

On December 19, 2003, APHIS received a petition (APHIS No. 03-353-01p) from Mycogen Seeds/Dow AgroSciences LLC of Indianapolis, IN, and Pioneer Hi-Bred International of Johnston, IA (Dow AgroSciences/Pioneer), requesting a determination of nonregulated status under 7 CFR part 340 for corn (*Zea mays*) designated as corn line DAS-59122-7, which has been genetically engineered for resistance to corn rootworm and for tolerance to the herbicide glufosinate. The Dow AgroSciences/Pioneer petition states that the subject corn should not be regulated by APHIS because it does not present a plant pest risk.

In a notice published in the **Federal Register** on July 1, 2005 (70 FR 38094-38096, Docket No. 04-113-1), APHIS announced the availability of the Dow AgroSciences/Pioneer petition and an environmental assessment (EA). APHIS solicited comments on whether the subject corn would present a plant pest risk and on the environmental assessment. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject corn and products developed from it.

APHIS received two comments by the close of the comment period on August 30, 2005. One comment was from a trade association, which supported the petition. The other comment was from

a private individual who did not support the petition. The response to these comments can be found in an attachment to the finding of no significant impact (FONSI).

APHIS has amended the section of the EA titled "Potential impacts on threatened and endangered arthropods." The amended section includes a reference to a process for assessment of impacts on threatened and endangered species that has been mutually agreed upon by the U.S. Fish and Wildlife Service and APHIS. The change in language merely provides clarity to the reader; it is not substantive and did not change the analysis described in the EA.

As described in the petition, corn line DAS-59122-7 has been genetically engineered to express a plant incorporated protectant (PIP) that controls certain corn rootworm. The PIP is an insecticidal crystal protein (ICP) from *Bacillus thuringiensis* strain PS149B1. The ICP is made of two proteins Cry34Ab1, approximately 14 kDa, and Cry35Ab1, approximately 44 kDa in molecular weight. Transcription of the Cry34Ab1 coding sequence is controlled by the maize ubiquitin promoter (UBI1ZM PRO). Transcription of Cry35Ab1 is controlled by a wheat (*Triticum aestivum*) peroxidase (TA Peroxidase) promoter. The termination sequences for these two genes were derived from the potato (*Solanum tuberosum*) proteinase inhibitor II (PINII). The PIP is expressed throughout the plant and confers resistance to northern corn rootworm (nCRW), western corn rootworm (wCRW), and Mexican corn rootworm (mCRW).

Corn line DAS-59122-7 has also been genetically engineered to express the enzyme phosphinothricin acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. The expression of the *pat* gene, derived from the bacterium *Streptomyces viridochromogenes*, is under the control of the cauliflower mosaic virus (CaMV) 35S RNA promoter and a CaMV termination sequence (CaMV35S TERM). The DAS-59122-7 corn line was generated through Agrobacterium-mediated transformation of the publicly available corn line Hi-II.

#### Determination

Based on its analysis of the data submitted by Dow AgroSciences/Pioneer, a review of other scientific data, field tests of the subject corn, and the comments submitted by the public, APHIS has determined the following with respect to corn line DAS-59122-7: (1) It exhibits no plant pathogenic properties; although a plant pathogen was used in the development of this