Recommendation aimed at reducing "ossification" of the regulatory process.[20] The Conference recognizes, however, that certain principles, including those embodied in the preemption provisions of Executive Order 13132, are sufficiently important to warrant systematic consideration by agencies engaging in rulemaking. The following Recommendation has accordingly been structured both to encourage compliance with existing executive directives and increase the efficiency of internal agency processes designed to ensure such compliance.

Recommendation

1. The Conference reiterates its previous, related recommendation that "Congress should address foreseeable preemption issues clearly and explicitly when it enacts a statute affecting regulation or deregulation of an area of conduct." [21]

Internal Procedures for Compliance With the Preemption Provisions of Executive Order 13132

2. Agencies that engage in rulemaking proceedings that may have preemptive effect on State law should have internal written guidance to ensure compliance with the preemption provisions of Executive Order 13132, which should describe:

a. How the agency determines the need for any preemption;

b. How the agency consults with State and local officials concerning preemption; and

c. How the agency otherwise ensures compliance with the preemption provisions of Executive Order 13132.

3. Agencies should post their internal guidance for compliance with the preemption provisions of Executive Order 13132 on the Internet or otherwise make publicly available the information contained therein.

4. Agencies should have an oversight procedure to improve agency procedures for implementing the preemption provisions of Executive Order 13132. This procedure should include an internal process for evaluating the authority and basis asserted in support of a preemptive rulemaking. The agency should provide a reasoned basis, with such evidence as may be appropriate, that supports its preemption conclusion.

Updated Policies To Ensure Timely Consultation With State and Local Interests Concerning Preemption

5. Agencies should have a consultation process that contains elements such as the following:

a. Agencies should use an updated contact list for representatives of State interests, including but not limited to the "Big Seven." The Administrative Conference will maintain such a list for use by agencies.

b. Agencies should maintain some form of regularized personal contact in order to build relationships with representatives of State interests.

c. Agencies should disclose to the public when they meet with the representatives of State interests in the course of rulemaking proceedings that may preempt State law. The disclosure should include the identity of the organization(s) or institution(s) that participate and the subject matter of the discussion.

d. Agencies should reach out to appropriate State and local officials early in the process when they are considering preemptive rules. Such outreach should, to the extent practicable, precede issuance of the notice of proposed rulemaking.

6. Agencies should establish contact with organizations and State and local regulatory bodies and officials that have relevant substantive expertise or jurisdiction.

7. Agencies should adopt, as one component of their notice practice, a procedure for notifying State attorneys general when they are considering rules that may have preemptive effect. This may be achieved via direct communication with State attorneys general and by contacting an appropriate representative organization such as, for example, the National Association of Attorneys General.

Actions by OIRA/OMB To Improve the Process

8. OIRA/OMB should request agencies to post on their open government Web sites a summary of the agencies' responses to the directive contained in the Preemption Memorandum to conduct a 10-year retrospective review of preemptive rulemaking.

9. OIRA/OMB should update its Federalism Guidelines with respect to preemption.

10. OIRA should include reference to Executive Order 13132 in Circular A–4.[22]

[FR Doc. 2010–32985 Filed 12–30–10; 8:45 am]

BILLING CODE 6110–01–P

[20] Administrative Conference of the United States, Recommendation No. 93–4, *Improving the Environment for Agency Rulemaking* (1993).

[21] Administrative Conference of the United States, Recommendation No. 84–5, *Preemption of State Regulation by Federal Agencies* (1984).

[22] Office of Info. & Regulatory Affairs, Circular A–4 on Regulatory Analysis (2003), *available at http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf* (last visited October 15, 2010).

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0041]

Pioneer Hi-Bred International, Inc.; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Corn Genetically Engineered To Produce Male Sterile/Female Inbred Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Pioneer Hi-Bred International, Inc., seeking a determination of nonregulated status for corn designated as DP–32138–1, which has been genetically engineered to produce male sterile/female inbred plants for the generation of hybrid corn seed that is non-transgenic. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting comments on whether this genetically engineered corn is likely to pose a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before March 4, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0041* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0041, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0041.

Reading Room: You may read any comments that we receive on this docket 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.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Rick Coker, Regulatory Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5720, e-mail: *richard.s.coker@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck

at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.* Those documents are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/08_33801p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/08_33801p_dea.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/08_33801p_dpra.pdf.*

SUPPLEMENTARY INFORMATION:

Background

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.

APHIS has received a petition (APHIS Petition Number 08–338–01p) from Pioneer Hi-Bred International, Inc. (Pioneer) of Johnston, IA, seeking a determination of nonregulated status for corn (*Zea mays* L.) designated as DP–32138–1, which has been genetically engineered to produce male sterile/female inbred plants for the generation of hybrid corn seed that is non-transgenic, stating that corn event DP–32138–1 is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, the controlled expression of a seed color marker gene and pollen fertility and sterility genes allows for the generation of red transgenic seed for seed increase of male sterile-female inbred lines and for the production of non-transgenic fertile pollen for use in non-transgenic hybrid commercial seed production. Corn event DP–32138–1 is currently regulated under 7 CFR part 340. Interstate movements and field tests of corn event DP–32138–1 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These data are used by APHIS to determine if the new variety poses a plant pest risk. Pioneer has petitioned APHIS to make a determination that corn event DP–32138–1 shall no longer be considered a regulated article under 7 CFR part 340.

In section 403 of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), "plant pest" is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a plant pest risk assessment to determine if corn event DP–32138–1 is unlikely to pose a plant pest risk.

APHIS has also prepared a draft environmental assessment (EA) in which it presents two alternatives based on its analyses of data submitted by Pioneer, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of corn event DP–32138–1 and it would continue to be a regulated article, or (2) grant nonregulated status to corn event DP–32138–1 in whole.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for corn event DP–32138–1. The draft EA was prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the draft EA prepared to examine any potential environmental impacts of the proposed determination for the deregulation of the subject corn line, and the plant pest risk assessment. The petition, draft EA, and plant pest risk assessment are available for public review, and copies of the petition, draft EA, and plant pest risk assessment are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and plant pest risk assessment will be available for public review. After reviewing and evaluating the comments on the petition, the draft EA, plant pest risk assessment, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of corn event DP–32138–1 and the availability of APHIS' written environmental decision and regulatory determination.

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 27th day of December, 2010 .

Gregory L. Parham,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–33083 Filed 12–30–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Environmental Impact Statement; Withdrawal

AGENCY: Forest Service, USDA.

ACTION: Notice of withdrawal of intent to prepare an environmental impact statement.

SUMMARY: The United States Department of Agriculture, Forest Service, Prescott National Forest, is withdrawing the March 2, 2010, **Federal Register** notice (75 FR 9388) which announced their intent to prepare an Environmental Impact Statement in accordance with the National Environmental Policy Act,