

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 13-022-01p) from the J.R. Simplot Company (Simplot) of Boise, ID, seeking a determination of nonregulated status of potatoes (*Solanum tuberosum*) designated as Innate™ potatoes (events E12, E24, F10, F37, J3, J55, J78, G11, H37, and H50), which have been genetically engineered for low acrylamide potential and reduced black spot bruise. Acrylamide is a human neurotoxicant and potential carcinogen that may form in potatoes and other starchy foods under certain cooking conditions. The petition states that these potatoes are 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, Innate™ potatoes have been genetically engineered through the insertion of genetic elements from potato or wild potato (a group of related plant species that are sexually compatible with potato) using Simplot's Innate™ technologies. Simplot's Innate™ technologies allow researchers to isolate genetic elements from any plant genome, rearrange them, or link them together in desired permutations, and introduce them back into the genome, without incorporating anything other than plant DNA. Innate™ potatoes are currently regulated under 7 CFR part 340. Interstate movements and field tests of Innate™ potatoes have been conducted under 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 tests. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258-13260, Docket No. APHIS-2011-0129) a

notice¹ describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, 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. The petition is available for public review, and copies are available as indicated under **ADDRESSES and FOR FURTHER INFORMATION CONTACT** above. We are

interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving information regarding the extent of true potato seed use for planting in the United States as compared to the use of asexually propagated fragments of potato tubers. We are also interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as potato growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. Any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an environmental assessment (EA) or an environmental impact statement (EIS)—in accordance with the National

Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500-1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

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 29th day of April 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2012-0023]

Changes to Scrapie Flock Certification Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: We are giving notice of changes to the Scrapie Flock Certification Program (SFCP), a voluntary program for sheep and goat flock owners who wish to reduce and/or eliminate the risk of introducing classical scrapie into their flocks. In order to refocus the program's risk reduction strategy on animal sampling, we plan to eliminate the Complete Monitored category of the SFCP. This will affect all "Complete Monitored" and "Certified" flocks. Flock owners who are currently enrolled in the Complete Monitored or Certified category who wish to remain in the SFCP will be allowed to enroll in either the Select category or the Export category. This change will allow us to apply limited agency resources to areas that most effectively contribute to scrapie eradication, such as nationwide surveillance activities for the disease in sheep and goats.

¹ To view the notice, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129>.

DATES: We will consider all comments that we receive on or before June 3, 2013.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/> #!/documentDetail;D=APHIS-2012-0023-0001.

- *Postal Mail/Commercial Delivery:*

Send your comment to Docket No. APHIS-2012-0023, 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-2012-0023 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.

FOR FURTHER INFORMATION CONTACT: Dr. Alan Huddleston, Associate National Scrapie Program Coordinator, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 851-3497.

SUPPLEMENTARY INFORMATION: Scrapie is a degenerative and ultimately fatal disease affecting the central nervous systems of sheep and goats. It belongs to a group of diseases called transmissible spongiform encephalopathies. The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), administers a National Scrapie Eradication Program (NSEP) to eliminate classical scrapie from the United States. The Scrapie Flock Certification Program (SFCP), described in regulations at 9 CFR part 54, is a voluntary program within the broader NSEP. Producers who elect to join the SFCP agree to follow a set of requirements outlined in the "Scrapie Flock Certification Program Standards" (program standards). We plan to revise the program standards for the SFCP. The SFCP program standards may be viewed on the APHIS Web site at http://www.aphis.usda.gov/animal_health/animal_diseases/scrapie/. Printed copies may be obtained from the person listed above under **FOR FURTHER INFORMATION CONTACT**.

Since APHIS established the SFCP as part of the NSEP, SFCP participants have received tangible benefits from the program, including a reduced risk of

introducing scrapie into the flock and an increased marketability of participating animals. However, APHIS has evaluated the effects of the SFCP on scrapie eradication and concluded that the SFCP does not support national scrapie eradication as effectively as other surveillance activities, such as the Regulatory Scrapie Slaughter Surveillance (RSSS) program, distribution of free eartags to sheep and goat producers, and disease investigations and flock clean ups. Due to budget reductions in fiscal year (FY) 2012 and anticipated reductions in upcoming fiscal years, the NSEP needs to focus resources on its most effective components. APHIS has therefore decided to revise the SFCP to focus resources on other surveillance activities. The revisions to the SFCP are expected to both increase the program's contributions toward surveillance by approximately 50 percent and to cut the cost of the voluntary program roughly in half, saving about \$500,000 annually for surveillance activities. The revised SFCP will assist APHIS in continuing to move efficiently toward scrapie eradication.

Effects of the SFCP on Scrapie Eradication

Our analysis of the effects of the SFCP on scrapie eradication found:

- Participation in the SFCP is voluntary, and participating flocks represent only 1 percent of the total number of U.S. sheep flocks and goat herds
- Participation in the SFCP has declined by about 25 percent since 2007
- More owners are using genotyping to reduce a sheep flock's risk of infection than the voluntary flock certification program
- The Complete Monitored category of the SFCP does not efficiently detect scrapie cases

Surveillance and disease response activities are the most effective components of the scrapie program with regard to eradication. The ability to detect clinically healthy but infected animals and successfully trace them back to their infected and source flocks has decreased scrapie prevalence by 85 percent, from 0.2 percent in 2002–2003 to less than 0.03 percent at the end of FY 2011. The most effective activities include:

- The RSSS program
- The distribution of free official eartags to sheep and goat producers
- Compliance enforcement at animal concentration points
- Disease investigations

Decreased funding for these elements means that many of the remaining scrapie-infected animals in the United States may go undetected. This could cost the sheep and goat industries approximately \$10 million to \$20 million each year scrapie continues to be present in our national sheep and goat population.

The SFCP is a voluntary State-Federal-industry cooperative effort established and maintained to monitor flocks and certify the scrapie status of the animals enrolled in the program. Any sheep or goat owner or manager may apply to participate in the SFCP. There are three categories of enrollment. The Selective Monitored category has the lowest level of monitoring, and flocks participating in this category cannot become certified. The Complete Monitored category has a higher level of monitoring, and flocks can achieve Certified status after 5 years. The Export Monitored category has the highest level of monitoring, and flocks can become Export Certified after 7 years. Approximately 94 percent of all participating flocks are in the Complete Monitored category. The most significant cost of the SFCP is the annual inspection, which is currently required for every flock participating in the program.

The revised SFCP will eliminate the Complete Monitored category. Participants in this category will have the following options: (1) Join a revised Selective Monitored category; (2) join the Export Monitored category; or (3) withdraw from the program. The Selective Monitored category will be renamed Select Monitored, to be consistent with the common category reference used by the sheep and goat industry. The revised Select Monitored category will no longer be subject to the annual inspection of all animals conducted by an APHIS or State representative under the former Selective Monitored category. We expect that 40 percent to 60 percent of current Complete Monitored category participants will either join the Select category or withdraw from the program, and the remaining 40 to 60 percent will join the Export Monitored category. Because the revised Select Monitored category would no longer require an annual inspection, the cost of the SFCP will be cut roughly in half, saving about \$500,000 annually for surveillance activities. Additionally, the Select Monitored category will have a new sampling requirement; flocks that join the Select Monitored and Export Monitored categories will therefore contribute a greater number of animals for scrapie testing than in the current

program. The reduced cost of the SFCP and the increased surveillance achieved through the revised program will allow APHIS to continue to move efficiently toward full scrapie eradication.

If a participant with a flock currently in the Complete Monitored category chooses to join the Export Monitored category instead of the Select Monitored category, the flock will become an Export Monitored flock with the same status date that it held on its conversion date. If it is a Certified flock, it will become an Export Monitored flock with 5 years of time in status. APHIS will list the flock as both an Export Monitored flock and a Certified flock on its Web site for 3 years or until it achieves Export Certified status. After 3 years, flocks that have not achieved Export Certified status would be listed only as Export Monitored. Most former Certified flocks that join should be able to achieve Export Certified status within 2 years, since Certified status required 5 years of successful monitoring and Export Certified status requires 7 years.

We welcome public comment on this notice and the proposed revisions to the SFCP program standards. If no substantive changes to the revised SFCP are deemed necessary by the APHIS Administrator, the revised SFCP program will come into effect 7 days after the close of the comment period for this notice. If substantive changes are deemed necessary, we will publish an additional document in the **Federal Register** to discuss them; otherwise, the final version of the revised SFCP program standards will be announced and made available on the APHIS Web site at http://www.aphis.usda.gov/animal_health/animal_diseases/scrapie/.

Done in Washington, DC, this 29th day of April 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 24, 2013, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) final results of remand determination, regarding the scope of the *Hand Trucks Order*¹ excluding the WelCom Products MCK Magna Cart pursuant to the CIT's remand order in *WelCom Products, Inc. v. United States*, Court No. 11-00370, Slip Op. 12-124 (September 27, 2012) (*WelCom*). See Results of Redetermination Pursuant to Court Order, Court No. 11-00370, dated December 20, 2012 (*WelCom MCK Magna Cart Remand Results*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final scope ruling and is amending its final scope ruling on WelCom Products' MCK Magna Cart. See the memorandum entitled "Hand Trucks and Certain Parts Thereof from the People's Republic of China (PRC): Final Scope Ruling—WelCom Products MC2 Magna Cart, MCI Magna Cart, and MCK Magna Cart," dated September 6, 2011 (Final Scope Ruling).

DATES: Effective Date: May 4, 2013.

FOR FURTHER INFORMATION CONTACT:

Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration—International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482-1131 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

¹ See *Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People's Republic of China*, 69 FR 70122 (December 2, 2004) (*Hand Trucks Order*).

Background

On October 12, 2010, WelCom Products (WelCom) submitted a request inquiring whether three of its products, the MC2 Magna Cart, MCI Magna Cart, and MCK Magna Cart, are outside of the scope of the *Hand Trucks Order*. In the Final Scope Ruling, the Department found the MC2 Magna Cart and the MCI Magna Cart are not within the scope of the hand trucks order, but the MCK Magna Cart is within the scope of the *Hand Trucks Order*. WelCom challenged the Department's final determination with respect to the MCK Magna Cart, and U.S. producer Gleason Industries challenged the Department's final determination with respect to the MC2 Magna Cart and the MCI Magna Cart. The Court sustained the Department's ruling with respect to the latter two products, but found the Department's decision regarding the MCK Magna Cart to be unreasonable. With respect to the MCK Magna Cart, the Court found the Department had not justified its conclusion in light of the Department's prior scope rulings, and, therefore, the ruling must be set aside and reconsidered. The Court ordered the Department to reconsider its conclusion that the entire telescoping portion of the frame must be less than 5/8" in diameter in order for a product to meet scope exclusion language in the order, and to further consider the record developed in the ITC injury determination. See *WelCom* at 14. Pursuant to the Court's order in *WelCom*, in *WelCom MCK Magna Cart Remand Results* we determined that the MCK Magna Cart is outside the scope of the *Hand Trucks Order*.² The CIT sustained the Department's remand redetermination on April 24, 2013. See *WelCom Products, Inc. v. United States*, Court Number 11-0370, Slip Op. 1354, April 24, 2013.

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's April 24, 2013, judgment sustaining the Department's remand redetermination construing the scope of

² The Department noted that it was conducting the remand respectfully under protest. See *WelCom MCK Magna Cart Remand Results* at 2. See also *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).