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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. APHIS-2006-0124]

RIN 0579-AC08

Sharing Certain Business Information Regarding the Introduction of Genetically Engineered Organisms with State and Tribal Government Agencies

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have amended the regulations regarding genetically engineered organisms regulated by the United States Department of Agriculture by adding provisions for sharing certain business information with State and Tribal government agencies. We have decided to withdraw the proposed rule to ensure that our ability to protect confidential business information from disclosure is maintained.

DATES: The proposed rule published on February 27, 2013 (78 FR 13286-13294) is withdrawn, as of [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Chessa Huff-Woodard, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737-1236; (301) 851-3943.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2013, the Animal and Plant Health Inspection Service (APHIS) published in the Federal Register a proposal¹ (78 FR 13286-13294, Docket No. APHIS-2006-0124) to amend the regulations to share certain confidential business information (CBI) with State and Tribal regulatory officials. APHIS proposed to share certain CBI contained in permit applications and notifications for importations, interstate movements, and releases into the environment of regulated genetically engineered (GE) organisms only with those specific State or Tribal agencies that have jurisdiction over GE agricultural crops and/or products, to enable the State and Tribal governments to better review and comment on notifications and permit applications received by APHIS and provide information, comments, and recommendations to APHIS.

Since publication of the proposed rule, we have discovered potential vulnerabilities under the Freedom of Information Act (FOIA). While CBI is protected from mandatory public disclosure under FOIA (5 U.S.C. 552(b)(4)), we conducted an in-depth review of FOIA and determined that disclosure of CBI to State and Tribal regulatory officials may constitute a waiver of this FOIA exemption. Specifically, under FOIA, the States are considered members of “the public.” Because disclosure to one member of the public means disclosure to the general public, APHIS may be required to disclose the CBI shared with State and Tribal regulatory officials to anyone who requests the same information under FOIA. FOIA mandates that Federal agencies

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0124>.

must or may withhold CBI, and we are committed to protecting CBI. Therefore, we have now decided to withdraw the February 27, 2013, proposed rule in order to ensure protection of CBI provided to APHIS in notifications and permit applications.

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 14th day of July 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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