

# Proposed Rules

Federal Register

Vol. 65, No. 180

Friday, September 15, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### 36 CFR Part 800

#### Protection of Historic Properties

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice of proposed suspension of rule and adoption as guidelines.

**SUMMARY:** The Advisory Council on Historic Preservation proposes to suspend its rule implementing Section 106 of the National Historic Preservation Act. Such rule sets forth the process by which Federal agencies consider the effects of their undertakings on historic properties and provide the Council with a reasonable opportunity to comment with regard to such undertakings, as required by Section 106. The suspended rule would become guidelines upon the effective date of suspension.

**DATES:** Submit comments on or before October 30, 2000.

**ADDRESSES:** Address all comments concerning this proposed rule to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606-8672. You may submit electronic comments to: regs@achp.gov.

**FOR FURTHER INFORMATION CONTACT:** Javier Marques, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004 (202) 606-8503.

**SUPPLEMENTARY INFORMATION:** On September 6, 2000, the Advisory Council on Historic Preservation ("Council") voted to suspend the Section 106 rule currently codified under 36 CFR part 800 after a 45-day notice and comment period. That rule sets forth the process by which Federal agencies consider the effects of their undertakings on historic properties and provide the Council with a reasonable opportunity to comment with regard to such undertakings, as required by

Section 106 of the National Historic Preservation Act. The Council also voted to adopt the rule to be suspended as guidelines, effective immediately upon suspension of the rule.

The Council is currently seeking public comment on such actions. If the public comments received do not compel the Council to change its course, the Council plans to proceed with publishing a final rule suspension that would suspend the current rule and reissue the text of the suspended rule as guidelines, with an immediate effective date.

The Council is compelled to take these actions by the prospect of a potentially unfavorable ruling from the court that would severely disrupt the Section 106 process. Reluctantly, the Council has come to the conclusion that suspending the current Section 106 rule, which is at the heart of the litigation, is now the most advisable course to follow.

The preeminent issue in the litigation at this point is the participation of two Council members, who are not appointed by the President, in the rulemaking process leading up to the adoption of the current rule. The plaintiff has argued to the court that such participation violated the Appointments Clause of the Constitution, and that the court should therefore invalidate the regulations without delay. Even though the Council believes the law is on its side on this issue, it runs a risk of having the court rule against it and immediately invalidate the current Section 106 rule in short order. An abrupt suspension of the rule would cause chaos in the ongoing Section 106 reviews, and is seen by the Council as an unacceptable risk.

The Council believes that by proceeding in this manner, it is fashioning an orderly and prudent way of proceeding rather than risking the possibility of an immediate suspension from an adverse court ruling. Of utmost importance, the Council will be able to provide adequate advance notice to the public that the current Section 106 rule is being suspended by a certain date and specify the system that should be followed until new regulations take effect, so Federal agencies, other participants in the Section 106 process and the public can prepare accordingly. This notice and comment period is

essential to provide participants in the Section 106 process with sufficient notice of the proposed suspension to ensure an orderly transition. Section 106 regulations were applied to 95,419 agency undertakings during fiscal year 1999. Accordingly, thousands of projects are undergoing Section 106 review at any one time during the year. A reasonable notice and comment period is essential to prevent unduly and abruptly disrupting these thousands of reviews that are proceeding under the existing Section 106 rule. It would also provide Federal agencies the time needed to make responsible and informed decisions as to how to complete their ongoing reviews, and how to comply with Section 106 for new projects without the benefit of a regulatory framework.

As already mentioned, the Council is also proposing to adopt the rule to be suspended as guidelines. While such guidelines would not have the binding legal effect of a rule, they would specify a reasonable procedure for participants in the Section 106 process. The other alternative is to go back to the 1986 rule, but the Council believes that would be unwise. The 1992 amendments to the National Historic Preservation Act brought important changes to the Section 106 process that are simply not reflected at all in the 1986 rule. The current Section 106 rule to be suspended incorporates those changes.

The current Section 106 rule, which would become guidance following the proposed suspension, was unanimously approved by the Council in February, 1999. On June 23, 2000, the Council membership (minus the two, non-Presidentially appointed members) unanimously reaffirmed its belief that the current Section 106 rule represents the process that Federal agencies should follow to comply with Section 106. Those who wish to examine the evolution and rationale behind the substance in these proposed guidelines, are asked to consult the following public documents: (a) Notice of proposed rulemaking at 59 FR 50396, October 3, 1994; (b) notice of proposed rulemaking at 61 FR 48580, September 13, 1996; and (c) final rule and preamble published at 64 FR 27044-27084, May 18, 1999.

The Council is optimistic that the period of time during which the public will need to comply with the Section

106 process without the benefit of a rule will be brief. The general comment period for the proposed rule published July 11, 2000 (65 FR 42834) closed on August 10, 2000. The Council extended the comment period to August 31, 2000 for all those members of the public that made timely requests for additional time to provide comments. The Council received a total of 59 comments. The Council is currently in the process of reviewing and evaluating the comments received on the proposed rule, and believes that it will vote on adopting a new final rule by November 17, 2000, as originally anticipated.

#### List of Subjects in 36 CFR Part 800

Administrative practice and procedure, Historic preservation, Indians, Intergovernmental relations.

For the reasons stated above, the Advisory Council on Historic Preservation proposed to suspend the rule currently codified at 36 CFR part 800, and adopt it as guidelines.

Dated: September 8, 2000.

**John M. Fowler,**  
Executive Director.

[FR Doc. 00-23575 Filed 9-14-00; 8:45 am]

BILLING CODE 4310-10-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 152 and 174

[OPP-250127; FRL-6047-9]

RIN 2070-AC02

#### Final Regulations for Plant-Pesticides (Plant-Incorporated Protectants); Notification to the Secretary of Agriculture

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification to the Secretary of Agriculture.

**SUMMARY:** This document notifies the public that the Administrator of EPA has forwarded to the Secretary of Agriculture, a draft final rule under section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act. The substances plants produce for protection against pests are pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act definition of pesticide, if humans intend to use these substances for "preventing, destroying, repelling or mitigating any pest." These substances, produced and used in living plants, along with the genetic material necessary to produce them, are currently called "plant-pesticides" by

EPA. In this final rule, EPA will rename these pesticides, calling them "plant-incorporated protectants," will exempt a category of plant-pesticides, will clarify the relationship between plants and plant-pesticides and confirm that plants used as biological control agents are exempt from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act, and will establish new part 174 in Title 40 of the Code of Federal Regulations, specifically for plant-pesticides.

**FOR FURTHER INFORMATION CONTACT:** By mail: Philip Hutton, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460; telephone number: (703) 308-8260; and e-mail address: hutton.phil@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

This action is directed to the public in general for notification. This action may, however, be of interest to a person or company that may be involved with agricultural biotechnology that may develop and market plant-incorporated protectants. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this notice. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

*Electronically.* You may obtain electronic copies of this document, and certain other documents related to the proposed rule only that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. The draft final rule is not available until it has been signed by EPA. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

##### II. What Action is EPA Taking?

Section 25(a)(2) of FIFRA provides that the Administrator must provide the Secretary of Agriculture with a copy of

any regulation at least 30 days before signing it for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the Administrator shall include in the final rule when published in the **Federal Register** the comments of the Secretary and the Administrator's response to those comments. If the Secretary does not comment in writing within 15 days after receiving the final rule, the Administrator may sign the final rule for publication in the **Federal Register** anytime after the 15-day period. As required by FIFRA section 25(a)(3), a copy of the final rule has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. EPA issued a proposed rule in the **Federal Register** of November 23, 1994 (59 FR 60534) (FRL-4755-3).

##### III. Do Any Regulatory Assessment Requirements Apply to this Notification?

No. This document is not a rule, merely a notification of submission to the Secretary of Agriculture. As such, none of the regulatory assessment requirements apply to this document.

##### IV. Will EPA Submit this Notification to Congress and the Comptroller General?

No. This action is not a rule for purposes of the Congressional Review Act (CRA), 5 U.S.C. 804(3), and will not be submitted to Congress and the Comptroller General. EPA will submit the final rule to Congress and the Comptroller General as required by the CRA.

##### List of Subjects in Parts 152 and 174

Environmental protection, Administrative practice and procedure, Biotechnology pesticides, Pesticides and pests, Reporting and recordkeeping.

Dated: September 11, 2000.

**Stephen L. Johnson,**

Associate Deputy Assistant Administrator for the Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 00-23780 Filed 9-14-00 8:45 am]

BILLING CODE 6560-50-S