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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2020-0030]

State University of New York College of Environmental Science and Forestry; Petition for Determination of Nonregulated Status for Blight-Resistant Darling 58 American Chestnut

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from the State University of New York College of Environmental Science and Forestry (ESF) seeking a determination of nonregulated status for blight-resistant Darling 58 American chestnut (*Castanea dentata*). The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms. We are making available for public comment the ESF petition and requesting public input regarding potential issues and impacts that APHIS should be considering in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0030>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2020-0030, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

The petition and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0030> 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.

The petition is also available on the APHIS website at:

<https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/permits-notifications-petitions/petitions/petition-status> under APHIS petition 19-309-01p.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Eck, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 851-3892, e-mail: cynthia.a.eck@usda.gov.

SUPPLEMENTARY INFORMATION:

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), 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 organisms and plants developed using genetic engineering 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 19-309-01p) from the State University of New York College of Environmental Science and Forestry (ESF), seeking a determination of nonregulated status for Darling 58 American chestnut (*Castanea dentata*). The ESF petition states that Darling 58 American chestnut has been genetically engineered for fungal resistance to chestnut blight caused by *Cryphonectria parasitica* and 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, resistance to this exotic pathogen in Darling 58 American chestnuts was enhanced by adding a gene for an enzyme called oxalate oxidase (OxO). This enzyme has no direct fungicidal properties, but rather detoxifies oxalic acid (oxalate) produced by the fungus, preventing the acid from killing the chestnut's tissues, which can lead to lethal cankers on the tree. In the presence of OxO, the damage caused by the oxalate is significantly restricted, resulting in superficial cankers. For this reason, the tree can coexist with the fungus in a manner similar to Asian chestnut species in the fungus' natural range.

Data were 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 organisms developed using genetic engineering. 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 organisms developed using genetic engineering, 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 comment, 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 comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments.

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 decision-making documents. As part of our decision-making process regarding an organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation--either

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

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 13th day of August 2020.

Mark Davidson,

Acting Administrator,

Animal and Plant Health Inspection Service.

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