

by an entity as having a legitimate need to handle or use listed biological agents or toxins must undergo a security risk assessment by the CJIS Division.

To minimize the disruption of research or educational projects involving biological agents or toxins that were underway as of the effective date of the regulations, we established a phase-in period that gave individuals and entities until November 12, 2003 to reach full compliance with the regulations. In recognition of the potential delays in registering entities under these regulations during the first year of implementation and the potential for subsequent delays in research, we also afforded additional time to reach full compliance with the regulations to individuals and entities who did not possess biological agents or toxins as of the effective date of the interim rule (February 11, 2003). Specifically, we required that such individuals and entities must be in compliance with the provisions of the regulations that are applicable for current possessors at the time of application, as provided in 7 CFR 331.0 or 9 CFR 121.0.

To date, the CJIS Division has received a large number of incomplete applications.¹ We anticipate that many of these applications will be completed and submitted to the CJIS Division just before the November 12, 2003 deadline. Because of the expected volume of last-minute submissions, the CJIS Division will need additional time to complete the necessary security risk assessments.

We are aware that many individuals and entities submitted all required information in a timely manner to ensure that it was received by the CJIS Division by November 12, 2003. In recognition of this good faith effort to comply with the regulations, and so as not to disrupt research and educational programs involving listed biological agents and toxins, we are amending the regulations to allow for the issuance of provisional registration certificates for individuals and entities and provisional grants of access to biological agents and toxins for individuals pending the completion of their security risk assessments.

To accomplish this, we are amending 7 CFR 331.0 and 9 CFR 121.0 to provide that APHIS may issue a provisional registration certificate to current possessors if, as of November 12, 2003:

(1) The Attorney General has received all of the information, including fingerprint cards, required by the Attorney General to conduct a security risk assessment of the entity, including any individual who owns or controls the entity; and (2) the entity otherwise meets all of the requirements of the regulations. In addition, we are amending both parts to provide that APHIS may issue a provisional registration certificate to individuals and entities that did not possess listed biological agents or toxins as of February 11, 2003, if, as of November 12, 2003: (1) The Attorney General has received all of the information, including fingerprint cards, required by the Attorney General to conduct a security risk assessment of the entity, including any individual who owns or controls the entity; (2) the entity otherwise meets all of the requirements of the regulations; and (3) the Administrator finds that circumstances warrant such action in the interest of the health of plants or plant products or national security (for the plant-related provisions in 7 CFR part 331) or the health of animals or animal products or national security (for the overlap and animal-related provisions in 9 CFR part 121). In either case, a provisional registration certificate will be effective until APHIS either issues a certificate of registration or suspends or revokes the provisional registration.

We are also amending both parts to provide that APHIS may issue a provisional grant of access for individuals identified by an entity as having a legitimate need to handle or use listed biological agents or toxins if, as of November 12, 2003, the Attorney General has received all of the information, including fingerprint cards, required by the Attorney General to conduct a security risk assessment of that individual. Such a provisional grant of access will be effective until APHIS grants or denies access to listed biological agents and toxins.

Since we expect the CJIS Division to receive a large volume of mail just before the November 12, 2003, deadline, the CJIS Division will likely need additional time to process its mail, and this may result in delays in the issuance of some provisional registration certificates and provisional grants of access.

For overlap agents and toxins, the regulations provide that an entity may submit all of the information and documentation required in the registration package to either APHIS or CDC. We note that the agency (either APHIS or CDC) that has the responsibility for processing an

application for registration will be responsible for issuing a provisional registration certificate or provisional grant of access, as appropriate. If an entity has any questions about which agency is processing its registration application, the responsible official may contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Immediate Action

Immediate action is necessary in order to prevent the disruption of research and educational projects. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not

¹ To avoid delays related to incomplete applications, individuals and entities should submit their FD-961 forms and fingerprint cards to the CJIS Division in one package. However, this does not apply to applicants who are submitting follow-up information or fingerprint cards for an existing incomplete application.