

(b) The Action Agency may, at its discretion, allow any subunit of the Action Agency to implement this subpart as soon as the subunit has fulfilled the training requirements of the ACA, upon written notification to the Service. The Action Agency shall at all times have responsibility for the adequacy of all NLAA determinations it makes under this subpart.

(c) The ACA and any related oversight or monitoring reports shall be made available to the public through a notice of availability in the FEDERAL REGISTER.

§ 402.34 Oversight.

(a) Through the periodic program evaluation set forth in the ACA, the Service will determine whether the implementation of this subpart by the Action Agency is consistent with the best available scientific and commercial information, the ESA, and section 7 regulations.

(b) The Service Director may use the results of the periodic program evaluation described in the ACA to recommend changes to the Action Agency's implementation of the ACA. If and as appropriate, the Service Director may suspend any subunit participating in the ACA or exclude any subunit from the ACA.

(c) The Service Director retains discretion to terminate the ACA if the Action Agency fails to comply with the requirements of this subpart, section 7 of the ESA, or the terms of the ACA. Termination, suspension, or modification of an ACA does not affect the validity of any NLAA determinations made previously under the authority of this subpart.

Subpart D—Counterpart Regulations Governing Actions by the U.S. Environmental Protection Agency Under the Federal Insecticide, Fungicide and Rodenticide Act

SOURCE: 69 FR 47759, Aug. 5, 2004, unless otherwise noted.

§ 402.40 Definitions.

The definitions in § 402.02 are applicable to this subpart. In addition, the fol-

lowing definitions are applicable only to this subpart.

(a) *Alternative consultation agreement* is the agreement described in § 402.45.

(b) *Effects determination* is a written determination by the U.S. Environmental Protection Agency (EPA) addressing the effects of a FIFRA action on listed species or critical habitat. The contents of an effects determination will depend on the nature of the action. An effects determination submitted under § 402.46 or § 402.47 shall contain the information described in § 402.14(c)(1)–(6) and a summary of the information on which the determination is based, detailing how the FIFRA action affects the listed species or critical habitat. EPA may consider the following additional sections for inclusion in an effects determination:

(1) A conclusion whether or not the FIFRA action is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat and a description of any reasonable and prudent alternatives that may be available;

(2) A description of the impact of any anticipated incidental taking of such listed species resulting from the FIFRA action, reasonable and prudent measures considered necessary or appropriate to minimize such impact, and terms and conditions necessary to implement such measures; and

(3) A summary of any information or recommendations from an applicant. An effects determination shall be based on the best scientific and commercial data available.

(c) *FIFRA action* is an action by EPA to approve, permit or authorize the sale, distribution or use of a pesticide under sections 136–136y of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.* (FIFRA). In any consultation under this subpart, EPA shall determine the nature and scope of a FIFRA action.

(d) *Listed species* is a species listed as endangered or threatened under section 4 of the Act.

(e) *Partial biological opinion* is the document provided under § 402.47(a), pending the conclusion of consultation under § 402.47(b), stating the opinion of the Service as to whether or not a