

(c) *Tolerances with regional registrations.* Tolerances with regional registrations are established for residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2- cyano-N1-

methylacetamidine, including its metabolites and degradates, in or on the commodities in the table below as a result of the application of acetamiprid. Compliance with the tolerance levels

specified below is to be determined by measuring only acetamiprid in or on the following commodities.

| Commodity            | Parts per million |
|----------------------|-------------------|
| Clover, forage ..... | 0.10              |
| Clover, hay .....    | 0.01              |

\* \* \* \* \*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2009-0480; FRL-8807-8]

#### Poly(oxy-1,2-ethanediyl), $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane]; Tolerance Exemption

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane]; when used as an inert ingredient in a pesticide chemical formulation under 40 CFR 180.960. UDL Laboratories, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane] on food or feed commodities.

**DATES:** This regulation is effective February 10, 2010. Objections and requests for hearings must be received on or before April 12, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0480. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available,

e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8560; e-mail address: [fertich.elizabeth@epa.gov](mailto:fertich.elizabeth@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

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

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at <http://www.gpoaccess.gov/ecfr>.

###### C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2009-0480 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 12, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2009-0480, by one of the following methods.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

## II. Background and Statutory Findings

In the **Federal Register** of October 7, 2009 (74 FR 51597) (FRL-8792-7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 9E7574) filed by UDL Laboratories, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478-2844. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane]; CAS Reg. No. 39444-87-6. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any substantive comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue..." and specifies factors EPA is to consider in establishing an exemption.

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances

will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane] conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane] meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane].

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane] could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane] is 1800 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane] conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." For the

purposes of this tolerance action, EPA has not assumed that poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane] has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative>.

#### VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane], EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

#### VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane].

#### VIII. Other Considerations

##### A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

##### B. International Tolerances

The Agency is not aware of any country requiring a tolerance for poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane] nor have any CODEX Maximum Residue Levels

(MRLs) been established for any food crops at this time.

#### IX. Conclusion

Accordingly, EPA finds that exempting residues of poly(oxy-1,2-ethanediyl),  $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane] from the requirement of a tolerance will be safe.

#### X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian

tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

#### XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 28, 2010.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## **PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, the table is amended by adding alphabetically the following polymer to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

| Polymer                                                                                                                                                                                 | CAS No.    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| * * * *                                                                                                                                                                                 | *          |
| Poly(oxy-1,2-ethanediyl), $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane], minimum number average molecular weight (in amu), 1800 ..... | 39444-87-6 |
| * * * *                                                                                                                                                                                 | *          |

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**RIN 0648-XT99**

**[Docket No. 100120036-0038-01]**

#### **Fisheries of the Northeastern United; Black Sea Bass Fishery; 2010 Black Sea Bass Specifications; Emergency Rule**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; emergency action; request for comments.

**SUMMARY:** Through this emergency rule NMFS is implementing increases to the 2010 black sea bass specifications (i.e., commercial fishing quota, recreational harvest limit (RHL), and research set-aside (RSA)). This action is necessary to mitigate potential foregone economic yield associated with the current lower specifications and to ensure the specifications are consistent with the best available scientific information. This action is also necessary to increase specifications consistent with the recently revised catch level

recommendation from the Mid-Atlantic Fishery Management Council (Council) and its scientific advisors, the Scientific and Statistical Committee (SSC).

**DATES:** Effective from February 10, 2010, through August 9, 2010. Comments must be received (see **ADDRESSES**) by 5 p.m., local time, on March 12, 2010.

**ADDRESSES:** You may submit comments, identified by 0648-XT99, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- (978) 281-9135. Send the fax to the attention of the Sustainable Fisheries Division. Include "Comments on 2010 Black Sea Bass Specification Increase" prominently on the fax.

- Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2010 Black Sea Bass Specification Increase."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Michael Ruccio, Fishery Policy Analyst, (978) 281-9104.

**SUPPLEMENTARY INFORMATION:** A final rule to establish the 2010 black sea bass specifications was published in the **Federal Register** on December 22, 2009 (74 FR 67978), and became effective on January 1, 2010. The final rule implemented a 2.71-million-lb (1,229-mt) Total Allowable Catch (TAC) and, after deducting estimated discards, a Total Allowable Landings (TAL) of 2.3 million lb (1,043 mt). The TAC was based on the SSC's initial 2010 Acceptable Biological Catch (ABC) recommendation of 2.71 million lb (1,229 mt) and was the status quo catch level from 2009. The TAL was further subdivided into RSA, commercial quota, and a RHL as outlined in the Summer

Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). However, at its December 9-11, 2009, meeting in Wilmington, DE, the Council decided to convene a joint meeting of the SSC and Black Sea Bass Monitoring Committee (MC) to re-examine and reconsider the SSC's 2010 black sea bass ABC recommendation. The Council's SSC and MC met on January 8, 2010, and ultimately decided to revise the ABC recommendation from 2.71 million lb (1,229 mt) to 4.5 million lb (2,041 mt), consistent with catch levels established for 2008.

On January 15, 2010, the Northeast Regional Administrator, NMFS, received a letter from the Council Chairman, on behalf of the full Council, formally relaying the SSC's revised ABC recommendation and requesting emergency action to increase catch levels as expediently as possible. The Council outlined the following as justification for requesting the emergency modification of the 2010 black sea bass catch levels as follows:

- The Council provided the January 8, 2009, SSC meeting summary. The summary document provides information on the SSC discussion and its justification for revising the 2010 ABC recommendation.

- The revision of the ABC recommendation by the Council's SSC was unforeseen.

- The increased catch levels provided by the revised ABC level can be reasonably expected to alleviate significant social and economic impacts relative to the initial ABC recommendation from the SSC.

The Regional Administrator has reviewed the Council's request for temporary emergency rulemaking with respect to section 305(c) of the Magnuson Stevens Fishery Conservation and Management Act (MSA) and NMFS policy guidance for the use of emergency rules (August 21, 1997; 62 FR 44421) and finds the Council's request meets both the criteria and justifications for invoking the emergency rulemaking provisions of the MSA. Specifically, the SSC revision of its previously recommended ABC was a recent and unforeseen event. By this emergency rulemaking, NMFS is increasing the 2010 black sea bass TAC and TAL, thereby relieving restrictions imposed by the previous, lower catch levels. Doing so will assist in preventing significant direct economic loss for fishery participants and associated industries that would be subject to lower commercial and recreational harvest levels. An additional amount of black sea bass landings will be set aside for research activities, thereby