

# **Finding of No Significant Impact and Decision Notice**

## **Animal and Plant Health Inspection Service**

### **Issuance of a permit to grow rice producing lactoferrin**

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) has received permit applications (APHIS number 04-302-01r and 05-117-01r) from Ventria Bioscience to conduct field tests with rice plants genetically engineered to produce human lactoferrin. A description of the field tests may be found in the attached Environmental Assessment (EA), which was prepared pursuant to APHIS regulations (7 CFR 372) promulgated under the National Environmental Policy Act. The field tests are scheduled to begin in 2005 in Scott County, Missouri and Washington County, North Carolina.

APHIS proposed three different actions to take in response to the permit application: the denial of the permit (Alternative I), the granting of the permit with no Supplemental Permit Conditions and no provisions for field test reports (Alternative II), and the granting of the permit with Supplemental Permit Conditions containing additional environmental safety requirements and a requirement for the filing of field test reports with APHIS (Alternative III).

A draft EA was prepared and submitted for public comment for 30 days. The public comment period was extended for 20 days. 676 comments were received and addressed, where appropriate, in the preparation of the final EA, which is attached to this document.

Based on the analysis documented in its EA, APHIS has selected the action proposed in Alternative III. APHIS has determined that the proposed action will not have a significant impact, either individually or cumulatively, on the quality of the human environment and that no Environmental Impact Statement will be prepared regarding this decision.

Pursuant to its regulations (7 CFR 340) promulgated under the Plant Protection Act of 2000, APHIS has determined that this field trial will not pose a risk of the introduction or dissemination of a plant pest for the following reasons.

1. The field trial is confined. Regulated articles are not likely to be removed from the field site through transport by water or animals. Accidental transport of regulated articles from the site by humans is minimized by strict SOPs and permit conditions.
2. Rice is predominately self-fertilizing, has short pollen viability, and the site is several miles from commercial rice crops. Therefore it is extremely unlikely that cross-pollination could occur with commercial rice.
3. The nos sequence is from the soil-inhabiting bacterial plant pathogen, *Agrobacterium* sp. and does not encode a protein. It does not cause plant disease and has a history of safe use in a number of genetically engineered plants (e.g., rice, corn, cotton and soybean varieties). The regulatory sequences from rice are the Gns9 promoter Gt1 promoter, gt1


signal peptide, and the RAmyl 1A terminator. None of the DNA regulatory sequences can cause plant disease by themselves or in conjunction with the genes that were introduced into the transgenic rice lines.

4. Lactoferrin is expressed predominantly in seed. Levels of expression in the remainder of the plant are not detectable.

5. Given the history of safe use of lactoferrin supplements in food and oral hygiene products and as nutritional supplements, APHIS concludes that humans are unlikely to be significantly affected by incidental contact with this rice that may occur during this field trial.

6. Based on the lack of toxicity of the proteins that will be produced and the prescribed permit conditions to minimize any seed remaining on the soil surface, APHIS concludes that there will be no significant effect on any native floral or faunal species in Scott County, Missouri or Washington County, North Carolina.

For the reasons enumerated above, which are consistent with regulations implementing the Plant Protection Act, the field trial of rice plants genetically engineered to produce human lactoferrin is hereby authorized.

  
for Cindy Smith  
Deputy Administrator  
Biotechnology Regulatory Services  
Animal and Plant Health Inspection Service  
U.S. Department of Agriculture  
Date:

JUN 21 2005

Attachment  
Finding of No Significant Impact  
Response to Comments  
APHIS permit number 04-302-01r and APHIS permit number 05-117-01r

On February 23, 2005 APHIS published a notice in the Federal Register (70 FR 8763, Docket No. 05-006-1) announcing the availability of an Environmental Assessment (EA) for this confined field trial. The 30 day comment period ended on March 25, 2005. On April 27, 2005, while APHIS was evaluating these comments, we received a request from Ventria Biosciences to plant rice line LF164-12 in a second site in Washington County, NC. Because many of the issues are similar for the two field tests, APHIS chose to extend the comment period to gather additional comments that specifically address any new issues that may exist for the North Carolina location. On May 13, 2005, APHIS published a second Federal Register notice (70FR 25521-25522, Docket No. 05-006-2) extending the comment period on Docket No. 05-006-1 for a period of 20 days. APHIS has considered the comments from both comment periods and the comments received during the intervening period. APHIS received 676 comments. Comments were received from rice growers, rice marketing and processing groups, agricultural support businesses, consumer groups, university professionals, private individuals, industry trade organizations, large rice purchasers, federal, state and local government representatives, and growers of crops other than rice. Five hundred eighty-six respondents did not support the issuance of a permit for a field trial of rice expressing lactoferrin. Forty-eight commenters did support granting a permit for a field trial for rice that expresses lactoferrin. Two comments provided information only and conveyed no opinion on the proposed field trial. The remaining forty comments were duplications of submitted comments. The issues raise in the comments are addressed in this attachment.

Several comments suggested that the EA is inadequate because it does not adequately consider the socio-economic impacts that could be caused by permitting this field trial. These economic impacts include comments from a few companies that purchase rice who suggest that they may not buy rice grown in areas that have transgenic rice. APHIS understands the concerns of the commenters. However, analyzing the full socio-economic impacts of an action goes well beyond the intent of an EA. CEQ's own guidelines suggest that:

Since the EA is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. Section 1508.9(b). <http://ceq.eh.doe.gov/nepa/regs/40/30-40.HTM#36>

The socio-economic impacts that are referred to in the comments are not science based. APHIS is charged with regulating based on scientific data. APHIS has reviewed the scientific literature, evaluated the applicant's permit, and considered the potential

environmental impacts that may occur as the result of this action (granting a permit). APHIS has found no significant environmental impacts associated with this action, and therefore no economic effects as a result of environmental impacts. If consumers choose to reject a particular product based on political, social, or cultural beliefs, this is a marketing issue not an environmental impact.

Several comments suggested that food and feed crops should not be used to produce PMPs, because these crops are indistinguishable, upon visual inspection, from crops grown for food. A group of commenters is also concerned that even barely detectable levels of a plant made pharmaceutical (PMP) in rice marketed for food or feed could result in domestic or foreign market loss or devaluation of rice grown in Missouri. Others are concerned that health issues may arise from even low levels of exposure.

APHIS recognizes that low levels and adventitious presence is an issue for plants intended for food and feed use. For genetically engineered crops which are not being developed for food and feed, we rely on strict confinement and compliance measures to ensure that these crops are not present in the food and feed supply chain. APHIS does not restrict the type of crop that is used to express a particular transgene, however APHIS does consider the biology of the crop chosen in devising confinement measures. Applicants are free to develop the plant that best suits their production needs. Ventria has been growing rice under permit for several years and has adhered to the strictest confinement measures. These measures have worked to ensure the segregation of this product from food and feed rice.

Several commenters are concerned about the possibility of dispersal of seed through incorrect handling. Comments suggested that growers may inadvertently send their harvest to rice mills. A few comments cite a report issued by the Union of Concerned Scientists entitled “***A Growing Concern: Protecting the Food Supply in an Era of Pharmaceutical and Industrial Crops***”

As stated in the EA the most reliable means of preventing potential human errors is to maintain and reinforce stringent standard operating procedures. Ventria has submitted Standard Operating Procedures (SOPs) as a part of the permit submission and these have been reviewed by APHIS. In addition to having stringent SOPs, all the harvested seeds will be stored in dedicated storage bins on site and seeds will be processed on site. During the processing, the seed will be dehusked using a dedicated dehusker on site and will be milled on site in a dedicated staging area at the field site using a dedicated mill owned by Ventria. Only Ventria personnel or employees assigned and trained by Ventria will be allowed to handle any seeds. Employing these methods along with following their SOPs will minimize the possibility of human error moving seed into other fields. The UCS report that was cited in some of the comments did not address the production of pharmaceutical products in rice. It focused on corn and soybeans. The report only considered production of these crops in a way that is inconsistent with APHIS permit requirements for regulated articles and the SOPs provided by Ventria. APHIS agrees with the report that if PMP crops were grown with the general commodity crops, that commingling with the general commodity crops is likely. However, APHIS does not allow PMP crops to be grown anywhere near crops used for food or feed. APHIS has

very strict permit requirements for growing regulated articles. The rice plantings will be inspected multiple times during the growing season to ensure compliance with the permit conditions.

Several comments compared the field trial for LF164-12 to Starlink corn or tomatoes at UC Davis that had an undocumented GE genotype. The comments suggest that because in these instances transgenic crops were found intermingled with conventional crops that transgenic crops cannot be kept isolated from conventional crops.

The two situations, Starlink corn and UC Davis tomatoes, mentioned in the comments were the result of human error in situations where the transgenic crop had been granted non-regulated status by APHIS. Once a transgenic variety has been granted non-regulated status, it is no longer a regulated article. APHIS does not regulate these plants and, as such, can impose no restrictions on growing or handling of these products. In both of these cases the transgenic lines were handled in a way that allowed commingling with conventional varieties. LF164-12 rice is a regulated article. It will be grown under strict confinement designed to ensure that this regulated article does not enter into the general commodity stream. Rice line LF164-12 will be physically isolated from all commercial rice. It will be planted, grown, harvested and processed in an isolated location with dedicated equipment. The field site will be inspected multiple times by trained APHIS personal before, during, and after the growing period to ensure strict compliance with all of the confinement measures.

As several commenters have noted, a company's track record is an important consideration and have also noted that Ventria is among the best in the plant biotechnology industry. APHIS notes that Ventria has not had any compliance infractions for the past six years while conducting field tests in California, Iowa, Montana, Hawaii and Idaho.

As several commenters have also pointed out, Ventria uses a closed system to produce its proteins. This closed system uses self-pollinating plants and dedicated equipment. Seeds are processed by grinding into a powder before shipment from the production location so all the operations will be kept on the farm from planting through processing to flour.

Several comments express concern for food safety of LF164-12. Many commenters are concerned that FDA has not yet completed its review of rice expressing lactoferrin. One commenter suggested that lactoferrin is associated with amyloidosis and autoimmune disease. Some comments suggest that lactoferrin may be an allergen. One of the comments notes that the information relating to the allergenicity of recombinant lactoferrin in Ventria's application to USDA is not consistent with Ventria's November 24, 2003 submission to the Food and Drug Administration (FDA)'s Center for Food Safety and Applied Nutrition (CFSAN). The commenter requests that the differences be addressed by USDA and FDA prior to allowing field trials to proceed. We at USDA appreciate that the commenter noted this discrepancy. Ventria has clarified this point by providing USDA with the information submitted to FDA CFSAN. Given the totality of information submitted by Ventria, APHIS has determined that the environmental impacts

due to the potential allergenicity of this rice, within the specified permit conditions under which it will be grown, are not significantly different for this confined field trial than those impacts would be for conventional rice. The safety of substances in food and feed falls within FDA's regulatory purview under the Federal Food, Drug, and Cosmetic Act, and therefore we defer to FDA on the issues of potential allergenicity and food safety of the recombinant lactoferrin in food and feed. In addition, as always, it is Ventria's responsibility to ensure that its recombinant lactoferrin rice is in compliance with all applicable legal and regulatory requirements.

Several commenters pointed out that even though rice is generally self-pollinating, that it outcrosses at low levels and pollen can be carried by wind and insects. Even though it is inbred it can cross at low rates. Some commenters were concerned that a ¼ mile isolation distance was insufficient.

One commenter indicated that recent research indicates that gene flow may occur at 110 meters between a quarter and a third of the 400m (¼ mile) distance required separation distance. The paper cited was from research conducted in China (Song et al., 2004). In this report the researchers used a universal paternal line that is normally used for hybrid rice breeding so the line produces a relatively large number of pollen grains compared to lines that are not selected for hybrid production. APHIS would like to point out that the study measured pollen flow, not gene flow. Pollen flow or movement does not necessarily indicate gene flow since many factors, other than pollen movement, contribute to the successful movement of genes. Not only does the pollen have to move, it must remain viable during flight, must land on a receptive female structure and it must successfully germinate and fertilize the egg cell. The referenced paper only looked at the potential of pollen to flow by placing glass slides coated with petroleum jelly in adjacent fields to capture pollen to measure flow. The researchers did not examine pollen viability or successful pollination and fertilization in the adjacent fields. Therefore it is incorrect to indicate that gene flow occurred at this distance. However, this same research group, in another study did examine gene flow from *Oryza sativa* to *Oryza rufipogon* (a weedy red rice endemic to China) out to 48 meters, from a parental line that produces a large number of pollen grains, and found that maximum gene flow occurred at 43 meters (141 feet) (Song et al., 2003). Even though this study examined a gene from a variety developed in China that crossed with a different species, one could argue that this is a worse case scenario for gene flow. Therefore the 400m (1320 feet) isolation distance proposed by Ventria is well outside of this range. In actual practice the plot will be several miles away from any commercial operations. The ¼ mile isolation distance is the area in which Ventria will scout for volunteers and scout for red rice to insure that the regulated article does not escape from the field site. Therefore APHIS concludes that the ¼ mile isolation distance is sufficient to prevent loss of the regulated article.

In addition one commenter indicated that varieties grown in the southern United States are indica subspecies and thus could not cross with Taipei 309, which is a japonica type. While many of the varieties grown in the south have indica-like qualities, and sometimes contain genes that have been introgressed from the indica subspecies, they are still commonly known as japonica types and for the most part have a japonica genetic

background. There may be some reduction in fertilization between the true japonica types such as Taipei 309 and the southern varieties due to their indica heritage, but the possibility of outcrossing to commercial varieties is still possible. Nonetheless the isolation distance proposed by Ventria should be more than sufficient to prevent outcrossing.

One commenter indicated that we did not consider observations of possible pollination of rice by insects. A small increase in outcrossing of rice has been observed when honey bees are present as mentioned by (Gealy et al., 2003). APHIS would like to note that the cited paper makes reference to anecdotal observations that are not derived from controlled scientific experiments. Considering the viability of rice pollen and the speed in which honeybees travel, it would be highly unlikely that a bee could successfully transport viable pollen from Ventria's fields to the closest commercial field. Given that rice pollen is only viable for 5 to 10 minutes and that the normal top speed of a worker bee is about 15-20 mph when flying to a food source and about 12 mph when returning laden down with nectar, pollen, propolis or water (<http://www.bbka.org.uk/faq.php>): it would be highly unlikely that a bee could leave Ventria's field site and deliver viable pollen to a receptive flower in a distant commercial field. Given that bees are very infrequent in rice fields, that bees would have to fly at top speed from Ventria's field to another field, a successful fertilization would have to occur, the seed would have to develop and escape harvest, survive the winter, and germinate the next year in the field in order for the gene product to occur in the subsequent crop; the multiplication of these very low probabilities results in the likelihood of this happening as infinitesimal. This scenario would also have to occur multiple times for the impact to be significant. Therefore APHIS concludes that the effects of insects on loss and subsequent appearance of the regulated article in another rice crop is insignificant.

Several commenters raised concerns about localized flooding between rice fields and the possibility that large-scale regional floods present the possibility for uncontrolled seed movement. It was pointed out that the proposed site is within 8 miles of the Mississippi River and that there were major floods in 1993 and 1995 that caused much damage along the river.

The Missouri farmer who was contracted to grow the crop has indicated to APHIS that the proposed planting site of the regulated article is in a 100 year flood plain. Records for the Cape Girardeau area date back to 1844 and indicate the 1993 flood as setting the local record <http://www.rosecity.net/river/floods.html>. The farmer has also indicated that the 1993 flood had no effect on this farm site. It is impossible to predict when floods might occur and the severity of floods, but the probability appears low that flooding of the Mississippi river would carry the rice downstream from this field site where it would subsequently germinate.

Commenters also pointed out that spring rains frequently exceed 3-4 inches causing levees to overflow, discharging ungerminated rice seeds into drainage ditches. Screens on rice boxes and exit pipes are prone to clogging. When blockage occurs, water escapes

over the levees into the drainage ditches and surrounding watersheds. So the seeds can escape in heavy rains.

In Missouri, Ventria will have a 50-foot fallow area around the fields to keep all water contained in the field site. In addition, all the water that is removed from the field will be directed to a sediment pond. This sediment pond should serve as a repository to any seeds that might float to the surface and escape from the field site during heavy spring rains, prior to germination. If necessary the excess water will be pumped out of the sediment pond. The pump inlets and outlets in the sediment pond will have multiple (with different pore sizes) removable screens in order to reduce the clogging/blockage effect. In the case of a continuous and exceptional rain, if necessary, the screens will be cleaned manually to make sure that there is no clogging of the pump outlet leading to levee overflow. The sediment pond will be a permanent structure in order to remove any excess water (if needed). Pre-germination and post harvest management will be carried out in the same way.

In North Carolina, Ventria will have a 50-foot fallow area around the fields to keep all water contained in the field site and all the water that is removed from the field will be directed to dedicated drainage ditches surrounding the field. These drainage ditches will serve as a repository to any seeds that might float to the surface and escape from the field site during heavy spring rains, prior to germination or after harvest. Any outlet of these drainage ditches will have multiple screens in order to stop any floating seed escape and reduce the clogging/blockage effect. In the case of a continuous and exceptional rain, if necessary, the screens will be cleaned manually to make sure that there is no clogging of the screens outlet leading to levee overflow. The drainage ditches will be a permanent structure in order to remove any excess water (if needed) and are a closed system dedicated to the entire rice-growing parcel. If there were any overflow from any of these dedicated ditches, the water will drain to a main ditch where Ventria currently stores its irrigation water. Ventria first pumps water to a closed/gated ditch and then pumps that water to the plots for growing rice.

There were several comments on the movement of grain by birds. This area of Missouri is a major migratory bird route. Rice fields are significant nesting and feeding grounds for migratory birds. Comments were made that bird species defecate seeds in a viable condition and that unretrieved birds are killed by hunters and predators can have undigested seed in their digestive tracts. The commenters claimed that there are no conclusive studies demonstrating the ability of migratory birds to disperse viable seeds through defecation.

This issue was previously addressed in the EA. Rice seed is a highly digestible grain that does not pass in a viable form through waterfowl, the most likely animals to consume grain in rice fields (Powers et al., 1978; Smith and Sullivan, 1980; Drobney, 2005). Powers et al. (1978); Smith and Sullivan, (1980) and Drobney (2005) checked the gut of 51 hunter killed waterfowl, and identified, counted and germinated the seed found. They found that the seeds of red rice, which are large and have a thin seed coat did not pass intact. David Eastera, Northwest Missouri State University, has indicated “that this



should be of no surprise to any avian physiologist who is familiar with the organs of digestion in birds – first the crop for softening of food – next the proventriculus for additional food softening and breakdown – then the very efficient muscular gizzard (containing grit and tiny pebbles/stones) for grinding and shredding the hardest of foods – next the small intestine where a barrage of acidic digestive juices continue the food digestion – last, the large intestine and cloaca contain the waste (including shredded rice hulls) to be voided.” Therefore given the nature of the digestive system of birds and the fact that rice has a thin seed coat it appears unlikely that rice seed will pass intact through the gut of birds.

APHIS acknowledges that there is a possibility that unretrieved birds or predators of birds could have undigested seed in their digestive tracks, but the possibility that these seeds would survive over the winter, and then germinate the following year in a commercial rice operation seems remote. These plants would also have to persist in the environment in order for there to be a significant impact, which also appears remote. Also, Ventria will employ methods to discourage birds feeding while the grain is mature and discourage waterfowl from entering the fields by keeping the fields dry in the fall and winter. After the grain is mature but before harvest, methods such as using timed air cannons, fluorescent flagging, chemical, electrical or mechanical repellents will be employed to discourage birds in the field. Therefore APHIS concludes that movement of the seeds by birds, the subsequent germination of those seeds, and persistence in the environment is of very low probability and would not lead to loss of confinement.

One comment dealt with the term “weedy red rice” and indicated that red rice is a “weed complex” consisting of more than one *Oryza* spp and it is not a “weedy biotype of the crop plant” as documented by (Vaughan et al., 2001). APHIS acknowledges that weedy red rice is more appropriately termed a weed complex that contains biotypes related to *O. sativa* ssp. indica, *O. sativa* ssp. japonica, as well as *O. nivara* and *O. rufipogon*. This complex is indeed weedy and can intercross with *O. sativa* spp. japonica, of which Taipei 309 is a member.

Comments were made on the potential transfer of genes from Ventria’s variety and weedy red rice since the two hybridize easily. This could lead to fitness advantage. If Ventria’s rice and red rice cross these compounds (which have antifungal and antimicrobial properties) might lend weedy hybrids a fitness boost making them tougher to eradicate. Another commenter indicated that gene flow has occurred between Clearfield rice and red rice, thus demonstrating that the transfer of a gene from a commercial variety to red rice can occur.

The gene flow that has occurred between commercial rice and red rice has been due to the close proximity of the two growing in the same location. The isolation distances that are proposed by Ventria should be sufficient to prevent any outcrossing with weedy red rice. In addition Ventria will scout for red rice both within the fields and ¼ mile out in the isolation zone. Any red rice found will be eliminated. This will prevent any outcrossing with red rice thus preventing the escape of the gene into a red-rice population.

One commenter asked APHIS to define the term *de minimis*. What does “reduce gene flow to *de minimis* levels mean? In this instance *de minimis* means: of trifling consequence or importance; too insignificant to be worthy of concern.

One commenter suggested that farm equipment that was previously used on other rice fields can bring weedy rice into the field, hybridize, and then go dormant, thus allowing the gene to persist in the environment. This scenario is highly unlikely since Ventria will use dedicated equipment that has only been used on its own rice operations. Red rice will not have been on the equipment because prior to this permit, Ventria’s operations were in California, where weedy red rice does not exist.

One commenter suggested that the EA should emphasize the management in the field after production to prevent volunteers. While stubble burning and irrigating to stimulate germination is a proven technique, they were concerned that the tillage (disking) proposed may actually extend seed survival if performed to incorporate seed too deeply in the soil.

APHIS shares this concern and has worked with Ventria to avoid deep tillage of the stubble and seeds that remain after harvest. After harvest, Ventria will first attempt to burn the field if weather permits. If it is not possible to burn right after harvest, other methods may also be used such as (2) watering the field (if by rain or irrigation to encourage germination and (3) applying herbicides to destroy any germinating seedlings. They will practice options 2 & 3 as many times as possible, as weather/temperature permits for germination before winter. They will also practice options 2 & 3 again during the spring.

If the field is going to be planted with the same varieties, Ventria will, prior to planting the next crop, cultivate and disk no more than ¾” deep (also known as light disking). If they are not going to follow with another crop, they will practice their “pureland” procedure, as explained on page 15 and 16 of the Environmental Assessment.

Other claims include the potential for rice containing the lactoferrin gene to be more competitive, due to the protein’s anti-microbial properties. The commenters assert that this character in weedy or red rice would result in a more competitive weedy strain by conferring disease resistance.

Since the lactoferrin gene is not expressed in other plant parts, such as foliage or roots, there is no lactoferrin present in these major organs of the plant and thus would not give the plant itself any inherent anti-microbial properties. Since the lactoferrin is only expressed in the seeds, any effect of lactoferrin would have to be manifested in the germination rates of the seeds compared to other commercial varieties. Ventria has been growing this line of rice for six years, and has never seen any increase in germination rates as compared to other lines of rice. In addition, the lactoferrin variety has never shown any significant difference in growth pattern or morphology in comparison to the

non-transformed parental line, during six years of field testing. Therefore there is no evidence that the transformed line has any increased weediness characteristics.

One commenter was concerned that certain human pathogenic bacteria and protozoa can be increased by the presence of recombinant lactoferrin. This raises the possibility that other bacteria and protozoa that are pathogenic for various animal species, particularly birds, could also be increased by the presence of lactoferrin. The commenter suggests that APHIS should determine if there are any pathogenic microbes that infect birds that have the ability to obtain iron from lactoferrin and determine what would happen if the birds consumed Ventria's lactoferrin-producing rice. Since the lactoferrin levels are very high in this rice, any iron-scavenging pathogens could significantly increase their numbers. Since rodents and other mammals could also consume the rice before or after harvest (rice spilled during harvesting), they could be adversely affected as well.

APHIS does not conclude that there are no effects on the environment-adverse or beneficial. The agency looks for significant impacts and has concluded that significant impacts are unlikely. The commenter suggests that sick animals might be differently affected by the iron in lactoferrin containing rice plants. Assuming that a very small percentage of a population of animals is diseased, this would mean that the significance of the result would be small even if these animals were affected.

The experiment proposed is complex and obtaining meaningful results might be difficult. First, as the number of variables increases-the experimental error increases and it becomes more difficult to define significant differences between treatments. Second, with increasing complexity in experimental design, reproducibility decreases. The experiments proposed by the commenter are very complicated. They would require using sick animals. As the variability and reproducibility of these experiments would be difficult to control, the results would be difficult to interpret. Furthermore, the experiments may only represent a miniscule subset of the nearly infinite number of potential experiments which could be conceived and which may bear no significance whatsoever.

One of permit conditions is to make observations in the field for adverse or unusual effects. If adverse or unusual effects are observed, future permitting activity will be denied unless these effects can be mitigated.

A couple of commenters expressed concern about Bakanae disease. This disease swept through the California rice growing regions in 2002, after being first discovered in Butte and Colusa counties in 1999. The disease is transmitted through contaminated seed. The commenters were concerned that since Ventria's seed were produced in California, that shipping seed from California to Missouri might result in the disease being transported to Missouri.

There is no evidence that this disease is present where Ventria produced their seed in California. However, Ventria agreed to test their seedlots for Bakanae and the test, (conducted by the California Department of Agriculture), was negative for the presence of the disease.

One commenter indicated that APHIS does not consider horizontal gene transfer (HGT) in humans or soil microorganisms to be a significant risk.

Transgenic DNA is no different than other DNA consumed as part of the normal diet. Genetically engineered organisms have been used in drug production and microbial fermentation (cheese and yogurt) since the late 1970's. More than 500 million cumulative acres of engineered food and feed crops have been grown and consumed world wide in the past seven years (International Service for the Acquisition of Agri-biotech Applications at:

[http://www.isaaa.org/kc/CBTNews/press\\_release/briefs30/es\\_b30.pdf](http://www.isaaa.org/kc/CBTNews/press_release/briefs30/es_b30.pdf). The FDA has not reported any significant concerns with bioengineered food and feed currently on the market. Based on lack of toxicity, the EPA has exempted from a pesticide tolerance DNA that are parts of plant-incorporated protectants 66 FR 37817-37830).

There have been several studies in humans and animals following the fate of DNA once consumed (Beever and Kemp, 2000);(Mercer et al., 1999); (Duggan et al., 2000); (Duggan et al., 2003); (Chambers et al., 2002); (Netherwood et al., 2002); (Einspanier et al., 2001). The majority of DNA consumed is degraded in the gastro-intestinal tract although this degradation is not 100% efficient. There is evidence that both transgenic and plant DNA can move from the GI tract lumen to other areas of the body and that this is a normal occurrence. No risks have been identified as a result of this movement.

Transfer and expression of DNA from the plant to bacteria is unlikely to occur due to several known impediments. First, transgene DNA promoters and coding sequences are optimized for plant expression, not prokaryotic bacterial expression, and the bacteria must be competent to accept DNA. Gebhard and Smalla (1999) and Schluter *et al.* (1995) have studied transgenic DNA movement to bacteria and although theoretically possible, it occurs at extremely low rates (approximately 1 in  $10^{-14}$ ). Many genomes (or parts thereof) have been sequenced from bacteria that are closely associated with plants including *Agrobacterium* and *Rhizobium* (Kaneko et al., 2000); (Galibert et al., 2001); (Wood et al., 2001); (Kaneko et al., 2002). There is no evidence that these organisms contain genes derived from plants. Koonin *et al.* (Koonin et al., 2001) and Brown (Brown, 2003) presented reviews based on sequencing data that revealed horizontal gene transfer occurs occasionally on an evolutionary time scale of millions of years.

One commenter brought up the fact that we prepared two separate EAs to address either lactoferrin or lysozyme produced in rice, but that since they will be planted at the same site we should have looked at possible interactions in the EAs. Even though these plantings will be planted adjacent to one another, they will be separated by a levee which will preclude any mixing of the plants or products. Therefore there is no reason to believe there will be any interaction between the two plantings that would negatively impact the environment.

A few commenters were concerned that APHIS intends for the current EA to be adequate to address both current and future cumulative environmental effects. The commenter is concerned that only one EA would be prepared for this planting and all future plantings

and that no future EAs would be prepared as the acreage increases. APHIS intends for this EA to apply to the current field planting. APHIS prepared this EA to address any environmental impacts of this field trial and to address the environmental impacts that may result as the result of multiple year plantings. The purpose of examining cumulative effects is to identify issues that may need special attention, mitigation, or that may require alterations of long term plans. As new issues arise and as acreages increase, environmental assessments will be prepared as appropriate.

One commenter recommended that all instances of “planting and harvesting” in the Supplemental Permit Conditions be reworded as “planting, harvesting and processing in the sections dealing with equipment. APHIS concurs and has made these suggested changes in the Supplemental Permit Conditions.

The EA states that the Mississippi river is 8-10 miles west of the planting site. APHIS regrets any confusion caused by this error. The river is east of the Missouri planting site.

One commenter suggested that APHIS was in violation of a court order with respect to Confidential Business Information (CBI). APHIS wishes to remind the commenter that the two court orders sent have not changed Federal law as to the protection afforded CBI. The field test locations at issue in CFS v. Veneman were provided to the plaintiffs in the lawsuit only under strict court orders that the information not be divulged to the public. To be allowed to view the field test locations, a person was required to sign a certification with the following provision:

"I understand that I may not, and agree that I will not, divulge to, or discuss with, any other person any Location Information disclosed to me...."

Several comments were written in support of the permit application for LF164-12. Reasons for support include the potential of the product to save the lives of children, the safety of the field trial, and the potential for increased economic potential for rice growers who grow value added crops. APHIS concurs with the commenters that these are laudable benefits and goals of this field planting. However, APHIS would like to emphasize that permits applications for PMPs are not granted based on potential benefits to society. While we acknowledge that this may be a benefit of this product. Field trials are permitted and conditions are mandated to ensure the safety of American agriculture. :

Several commenters are concerned about the proximity of the rice being grown under quarantine at the Tidewater Research Station near Plymouth, NC. The rice being grown at the Tidewater Station will be 0.62 miles away from Ventria's rice and is thus isolated from Ventria's rice by over ½ mile. Since this rice is outside of the ¼ mile isolation zone, there should be no cross pollination with the quarantined rice. Communications with the individual growing the rice under quarantine indicate that the ¼ mile isolation zone should be sufficient to prevent any inadvertent pollination or cross-contamination. These seed introduction trials are very small and will be isolated in both time and in space from the rice grown under this permit.

Several comments suggested that there was the possibility that feral rice is present in North Carolina; remaining after commercial rice operations left the state in the late 1800's or early 1900's. While there may be some isolated feral rice plants in the coastal areas of the State, Ventria has scouted for rice within the proposed ¼ mile isolation zone and has found no evidence of feral rice. Therefore it is extremely unlikely that there is any feral rice nearby with which Ventria's rice could cross-pollinate.

The ¼ mile isolation distance is the area in which Ventria will scout for volunteers and scout for feral or red rice to insure that the regulated article does not escape from the field site. Based on data cited above for the Missouri location, APHIS concludes that the ¼ mile isolation distance proposed by Ventria is sufficient to prevent loss of the regulated article.

One commenter indicates that there are "excessive claims" of Confidential Business Information (CBI) by Ventria and the allowance of these claims by APHIS. APHIS would like to point out that there is no CBI in the permit application submitted by Ventria to grow their rice in North Carolina.

Other commenters were concerned about the issue of hurricane-force winds on Ventria's planting. This was addressed in Appendix V of the EA and APHIS continues to conclude that if a hurricane were to affect the part of the State where the crop is grown, that the release of the regulated article would be unlikely due to the factors cited in the EA.

One commenter suggested that the growing of genetically engineered rice may impact the habitat of migratory birds and as such violate the Migratory Bird Treaty Act (16 U.S.C. 701 et seq.) APHIS has found no direct effects of this rice or the management practices associated with this rice in a confined field trial on any non-target organism including migratory birds. The Migratory Bird Treaty Act is violated by taking a listed bird. According to 50 C.F.R. 10.12, take means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect. Since migratory birds are not killed by this rice, this act would not apply. The commenter goes on to suggest that growing this rice would violate Executive Order 13186. APHIS disagrees with the commenter. The comment suggests that approval of these permits would have an adverse effect on habitat of migratory birds by polluting the habitat of migratory birds (§3(e)(3)), introducing exotic species §3(e)(10)), and increasing "unintentional take" that have, a measurable negative effect on migratory bird populations (§3(e)(9)). The commenter does not provide any evidence to support this position. Rather the commeter speculates that this field trial may adversely affect waterfowl or other birds that eat large quantities of rice from this field trial. APHIS would like to point out that this field trial is small and as such is unlike to be a significant portion of any migratory bird's diet. The fields will be managed as described above to minimize attractiveness to birds and other wildlife. As described above and in the EA, APHIS has also considered all available information with regard to the consumption of this rice by birds. There is no evidence that this rice has any adverse effect on birds. Therefore it is highly unlikely to result in an unintentional take. Additionally, APHIS does

not agree that a confined field trial of rice is an introduction of an exotic species. APHIS also disagrees that growing rice would result in pollution of migratory bird habitats.

Agricultural areas by their very nature are disturbed areas whose management is not consistent from season to season. Many crops are grown in rotation with other agricultural products. What may be a suitable site for a variety of birds one year may be inhospitable in the next. E.O 13186 does not require that agricultural lands be managed as suitable habitat for migratory birds.

Some commenters indicted that two wildlife refuges are within the general area of the field trial in North Carolina. APHIS agrees that there are wildlife refuges more than 15 miles from the field test site. Pocosin Lake National Wildlife Refuge is on the edge of Washington County and Lake Mattamuskeet National Wildlife Refuge is in Hyde County as the commenters suggest. APHIS also agrees that it is possible that birds may fly out of the refuge areas and feed in agricultural fields of many types. This field site is one of many agricultural fields that may be attractive to birds and other wildlife. The EA has addressed both the potential impacts of movement of the rice by wildlife and the potential impacts of ingestion of rice by birds and other wildlife. APHIS has determined that there are no significant impacts from either of these potential occurrences.

One comment suggested that APHIS would violate 7 C.F.R. 340.4(b) if we were to issue a permit in less than 120 days after the receipt of a permit application.

The intent of the rule is to ensure that APHIS has sufficient time to review the permit application and to complete analyses and consultations. APHIS strives to complete its review of all permits in a timely manner, many in less than 120 days.

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USDA/APHIS Environmental Assessment

In response to permit applications (04-302-01r and 05-117-01r)  
received from Ventria Bioscience  
for field-testing of rice, *Oryza sativa*, genetically engineered to  
express human lactoferrin

U.S. Department of Agriculture  
Animal and Plant Health Inspection Service  
Biotechnology Regulatory Services

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## I. Summary

The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service, Biotechnology Regulatory Services (APHIS/BRS) had previously prepared an environmental assessment (EA) in response to a permit application (APHIS number 04-302-01r) received from Ventria Bioscience, Sacramento, California, to grow genetically engineered rice (*Oryza sativa* L.) plants in Scott County, Missouri. These transgenic plants have been modified to express the human (*Homo sapiens*) glycoprotein lactoferrin. This EA was published for public comment February, 23, 2005 and the comment period closed on March 25, 2005. Prior to the completion of this EA, Ventria submitted another permit application (APHIS permit 05-117-01r) to grow this same rice in North Carolina. The plants to be grown in either Missouri or North Carolina, have been engineered to express lactoferrin and have also been engineered with the selectable marker gene *hpt*<sup>1</sup> which encodes for the enzyme hygromycin B phosphotransferase, Hpt. Hpt inactivates the antibiotic hygromycin. This gene is not expressed in the mature plant due to the nature of the promoter that drives this gene. The transgenic line to be planted for the production of lactoferrin has been designated by the company as LF164-12.

The previous version of this EA was written to cover field tests scheduled to be planted on a site in Scott County, Missouri. The scope of this EA has been expanded to cover an additional planting in Washington County, North Carolina.

This revised EA has this new Summary section and the addition of Appendices V and VI for North Carolina. The only other changes made were the correction of two errors found in the previous EA. In one case it was indicated that the Mississippi River is west of the field planting in Missouri when it is actually east. The other case is to correct information that was submitted by Ventria in relation to allergenicity data. Ventria has submitted revised data on homology to known allergens and toxins so these data have been added to this EA and can be found in Section VI. These new data do not change the conclusions in the EA.

This environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.C § 4321 et seq.); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR §§ 1500-1508); (3) USDA regulations and implementing NEPA (7 CFR § 1b); and (4) APHIS NEPA Implementing Procedures (7 CFR § 372).

These tests in both Missouri and North Carolina should be completed in the fall of 2005. Similar plantings are planned in future years with an increase in acreage over time.

The bases of confinement for these field tests are:

- The field test sites are located on private lands in Scott County, MO and Washington County, NC. Of the Counties that grow rice in Missouri, Scott County is not a major producer. There is no commercial rice grown in the State of North Carolina.

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<sup>1</sup> By convention, the gene is designated by small italic letters, and the protein produced by that gene is designated by non-italicized letters, first letter capitalized.

- In nature, chromosomal genetic material of rice can only be transferred to other sexually compatible plants by cross-pollination. Rice is highly inbred and outcrosses at a very low frequency. The field test plot will be at least 1/4 mile from any other rice plant with which it might cross-pollinate.
- To prevent intermingling of seeds with other crop plants Ventria will use dedicated equipment, storage and processing facilities on site. The harvested seeds will be milled on site and will not be shipped to any outside milling facilities.
- Neither of the introduced genes provides the engineered rice plants with any selective advantage over nonengineered rice in the ability to be disseminated or to become established in the environment.
- Horizontal movement of the introduced genes is extremely unlikely. The foreign DNA is stably integrated into the plant genome.

The proposed field plantings are a controlled release of the regulated article into the environment. The experimental protocols and field plot design as well as the procedures for termination of the field tests have been deemed sufficient to ensure that none of the modified rice plants persist in the environment beyond the termination of the experiments. The proposed field tests do not present a significant impact on populations of non-target animal species, including any threatened or endangered species in the Counties of the proposed test sites in either Missouri or North Carolina. The APHIS review and analyses of the data packages presented by the applicant indicate that the proposed field plantings do not present a risk of introduction and dissemination of a plant pest and should not have a significant impact, either individually or cumulatively, on the quality of the human environment.

## **II. Purpose and Need**

USDA/APHIS is considering the issuance a permit for confined field release of genetically engineered rice (*Oryza sativa* L.) plants in Scott County, Missouri. The purpose of this proposed introduction is to produce grain to be milled into flour from which lactoferrin will be extracted.

A permit application was submitted by Ventria Bioscience to USDA/APHIS pursuant to regulations codified in 7 CFR § 340 which are titled "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." The regulations govern the introduction (importation, interstate movement, or release into the environment) of certain genetically engineered organisms and products. A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. A genetically engineered organism is considered a regulated article if it is being introduced and if the donor organism, recipient organism, vector or vector agent used in engineering the organism belongs to one of the taxa listed in the 7 CFR § 340 and is also a plant pest, or if there is reason to believe that it is a plant pest. In this submission, the plants have been genetically engineered using recombinant DNA techniques, and *Agrobacterium tumefaciens* is the donor of the *nos* DNA regulatory sequence that facilitates the expression of the introduced gene in the engineered plants. The *nos* sequence is from the soil-inhabiting bacterial plant pathogen, *Agrobacterium*, which is one of the listed

taxa in the 7 CFR § 340. Thus, the genetically engineered organism in this Ventria submission is deemed a regulated article.

Generally issuance of a permit for field trials of regulated articles is categorically excluded from requirements for an environmental assessment (EA) under APHIS NEPA implementing procedures (7 C.F.R. Section 372.5(c)(3)(i)). However, when APHIS determines that a confined field release of genetically engineered organisms has the potential to affect significantly the quality of the human environment, as those terms are defined in 40 C.F.R. 1508.27 and 1509.14, an environmental assessment or environmental impact statement will be prepared, pursuant to 7 C.F.R. 372.5(d). This EA was prepared because the applicant intends to have repeated plantings of this engineered plant in Scott County, Missouri, for the next several years. The potential for cumulative impacts of repeated plantings in the same area raises new issues that this EA addresses. Future plantings are anticipated to increase in size and will be required to meet all the performance and mitigation measures described in this EA, standard and supplemental permit conditions, and the permit application.

### **III. Alternatives to the Proposed Action**

APHIS has considered the following three alternatives in response to the applicant's request for a permit:

- **Alternative 1:** Deny the permit. Release of the regulated organism would not be authorized.
- **Alternative 2:** Issue the permit. The planting and growing conditions proposed by the applicant would be authorized.
- **Alternative 3:** Issue the permit with additional conditions required by APHIS for conducting the field planting.

APHIS field test permits typically include supplemental permit conditions that may reflect input from the relevant State regulatory officials. The supplemental permit conditions also include additional post-planting and post-harvest volunteer monitoring reports following completion of the field tests. These post-planting and monitoring reports assist APHIS in evaluating the specific field test under permit and also provide guidance for evaluating future proposed field tests.

### **IV. Discussion of the Alternatives**

- **Alternative 1:** No Action/denial of the permit application. Under this alternative, field release of the genetically engineered rice plants would not be authorized.
- **Alternative 2:** Issue the permit for growing under the conditions proposed by the applicant. Under this alternative, field release of the genetically engineered rice plants would be authorized at the specified locations with no additional conditions outside of those the applicant provided in the request. Standard permit conditions under 7 CFR § 340.4 would be required (see Appendix I). Standard management practices, including use of some pesticidal and herbicidal sprays, will be included as part of the planting design.

- **Alternative 3:** Issue the permit with additional conditions for carrying out the field planting. Supplemental permit conditions, based on APHIS analysis, comments from U.S. Fish and Wildlife Service, the State of Missouri and public comment from this environmental assessment, would be required. If warranted, based on environmental risk of escape of the engineered organism, APHIS will require mitigating measures to prevent spread of the organism outside the field production area.

## V. Description of the Regulated Article – Rice Biology

In this section of the environmental assessment, the biology of rice and plants related to rice are considered along with potential routes of gene escape. Because the mechanism by which genes are moved from one flowering plant to another is through cross-pollination of sexually compatible plants, the plants with which rice can cross-pollinate are described. Below is an analysis of the biology of rice. This review focuses solely on rice in the United States. Other sources of information include a review prepared by the Organization for Economic Cooperation and Development (OECD), “Consensus Document on the Biology of *Oryza sativa* (Rice)” found at: [http://www.oelis.oecd.org/olis/1999doc.nsf/LinkTo/env-jm-mono\(99\)26](http://www.oelis.oecd.org/olis/1999doc.nsf/LinkTo/env-jm-mono(99)26) and the “Biology and Ecology of Rice (*Oryza sativa* L.) In Australia” found at <http://www.ogtr.gov.au/pdf/ir/biologyrice.pdf>

### Systematics of Rice

Cultivated rice is included in the genus *Oryza* of the grass family (Poaceae). The genus *Oryza* contains twenty two species distributed through the tropical and subtropical regions of Asia, Africa, Central and South America, and Australia. Two species are cultivated and twenty are wild (Morishima, 1984; Vaughan et al., 2003). *O. sativa* is commonly referred to as Asian rice and is cultivated worldwide. The word “rice” generally indicates a plant and a crop of this species. *O. glaberrima* is commonly referred to as African rice and is cultivated in West and Central Africa. The genus *Oryza* is not native to the continental United States. One species, *Oryza latifolia* Desv., Broadleaf rice, is native to Puerto Rico. Only the single species, *Oryza sativa* is cultivated in the United States. The only recorded instance of the introduction of wild rice in the United States was the introduction of *O. rufipogon*, which was introduced to a single area within the Everglades of Florida. It was removed, and monitored without reoccurrence (Vandriver et al., 1992). No other species of *Oryza* are known to occur wild in the United States.

Red rice (*O. sativa*) is a weedy rice associated with cultivated rice grown in the southern United States. It is a weedy biotype of the crop plant. Red rice has a red pericarp or seed coat, pubescent light-green leaves, pubescent seeds that are shed easily (shatter) and a dormancy mechanism that enables seed survival for extended periods under unfavorable soil and environmental conditions (Eastin, 1979; Diarra et al., 1985; Ladinsky, 1985). These characteristics are different from most cultivated rice which has a tan pericarp, does not shatter readily and has little if any seed dormancy. Red rice is also taller at maturity than most of the cultivars grown today. It can be a troublesome weed in rice growing operations in the southern U.S.

### Rice genetic improvement

Rice is a highly inbred crop and most rice growers in the United States use pure-line cultivars. Hybrid rice is currently under experimental evaluation in the United States but a large majority



of the rice grown is from pure lines (McKenzie et al., 1987). There is no hybrid rice under development in Scott County where this rice will be grown.

### **Weediness of Rice**

Rice plants (*Oryza sativa*) growing unintentionally around rice growing areas are regarded as weeds (Vaughan and Morishima, 2003). Weedy rice can result from the escape of cultivated varieties into surrounding areas if conditions are suitable for establishment. It appears that weedy rice commonly evolves through the degeneration of domesticated rice (Vaughan et al., 2003). Weedy rice may be derived from hybridization between different cultivars, selection of weedy traits present in cultivars, relics of abandoned cultivars, or may have been brought into the growing region through contaminated seed stocks (Vaughan and Morishima, 2003). Weedy rice typically grows only as a component of agro-ecosystems where rice is grown or has been grown. It does not persist in environments inhospitable to rice cultivation.

Weedy red rice can be a major economic problem when it occurs in rice fields because it can lead to a loss in yield through competition with the desired cultivar as well as decreasing the value of the harvested grain. It is for this reason that many seed certification standards have a zero tolerance for red rice contamination in fields established for certified seed increases. For example see [www.moseed.org/rice.htm](http://www.moseed.org/rice.htm).

### **Modes of Gene Escape in Rice**

Genes of rice may escape from the test plot in two ways. The first pathway of escape is by pollen transfer. The second is by movement of propagative material, *i.e.*, the whole seeds.

#### **Movement by outcrossing**

Rice is not sexually compatible with plant species outside of the *Oryza* genus. There are no sexually compatible species of *Oryza* other than *Oryza sativa* growing in the United States. Rice is primarily self-pollinating and outcrossing rates usually occur at a very low rate (generally less than 1%) (OECD, 1999). The floral structure of *O. sativa* and the short viability of its pollen present biological barriers to cross-pollination (Gealy et al., 2003). A rice floret opens only once for a short period of time, usually for a little over an hour or less, during which fertilization can occur. Pollen viability is for no longer than five to ten minutes, but the stigma can remain viable for two to four days and can be fertilized by foreign pollen if for some reason it is not fertilized by its own pollen (Gealy et al., 2003). Due to the high selfing characteristic of rice, the Association of Official Seed Certifying Agencies (AOSCA) certified seed regulations for foundation seed require a minimum isolation distance from other rice varieties of at least ten feet when ground drilled and 50 feet if ground broadcast (AOSCA, 2003). With proper isolation distances maintained between Ventria's rice and other cultivars of rice, gene escape via cross-pollination would be highly unlikely. Temporal isolation can further reduce the likelihood of effective pollination and fertilization.

In addition, another mechanism for gene escape would be outcrossing with weedy/red rice. The establishment of a weedy rice population next to the field site could offer a means of escape of the gene from the production area. Since red rice seeds often have dormancy and shatter easily, the gene could be harbored in a weedy population for a number of years.

### **Movement by animals**

A certain percentage of rice seeds (approximately 1 to 5 %) fall to the ground during harvesting. Although rice seeds that remain on the ground after harvesting can be consumed by animals, the lack of rice volunteers observed outside the proximity of the fields strongly supports that rice seeds are not widely dispersed by animals or birds. Rice seeds that are plowed under after fields are disked and burned are quickly decomposed under anaerobic conditions.

### **Movement of seeds by water**

Rice seeds are first planted in dry fields after which the fields are flooded. The time of year when rice seeds or seedlings are most likely to move about are in the first 2 weeks of planting, when the field is first flushed. After that period, seeds or seedlings will have sunk to the soil surface or be desiccated.

### **Movement by human error**

In a recent workshop hosted by APHIS dealing with gene confinement issues in genetically engineered crops ([http://www.aphis.usda.gov/brs/confine\\_workshop\\_2004.html](http://www.aphis.usda.gov/brs/confine_workshop_2004.html)), one of the more likely mechanisms contributing to the breakdown of confinement and movement of seed was identified as human error, and the most reliable means of preventing this is to maintain and reinforce stringent standard operating procedures.

## **VI. Description of the Regulated Rice Plant**

Ventria has engineered the rice plant to produce human lactoferrin in the seeds. The starting background of this engineered plant was Taipei 309, which is a *Japonica* type variety. This variety is not grown commercially in the United States. The company has designated the transgenic line to be planted for the production of lactoferrin as LF164-12. Gene expression is targeted to the developing seed so lactoferrin is not produced in other parts of the plant. Lactoferrin is ubiquitous in the human body and occurs in breast milk, tears, nasal secretions, saliva and other fluids. Studies have been conducted in vitro and in vivo and in both experimental animals and humans in an attempt to determine the functions of lactoferrin since its discovery by Sorensen in humans more than 60 years ago (Sorensen and Sornesen, 1939). Since then, lactoferrin has been shown to exhibit antibacterial, antiviral, antifungal, and antiparasitic activities (Naidu, 2000), (Shimazaki, 2000). Some of the beneficial properties of lactoferrin are related to its iron binding capacity. As an iron-binding protein it inhibits pathogenic bacteria by depriving them of iron.

### **The Vectors**

The genes were transferred into rice plants via a two vector system using microprojectile bombardment. This is a well characterized transformation system which integrates the donor genes into the chromosome of the recipient plant cell (Batty and Evans, 1992). The system does not require the use of the plant pathogen, *Agrobacterium tumefaciens*, or other transformation vectors. The donor DNA sequences are stably and irreversibly integrated into the plant's chromosomal or organellar DNA, where they are maintained and inherited as any other genes of the plant cell. Ventria estimate by Southern blots that there are 6 copies of the expression cassette for these genes in line LF164-12.

*Agrobacterium tumefaciens* and *Oryza sativa* (rice) are donors for non-coding DNA regulatory sequences that are associated with the introduced genes to facilitate expression in plants. The *nos* sequence is from the soil-inhabiting bacterial plant pathogen, *Agrobacterium* sp. and does not encode a protein. It does not cause plant disease and has a history of safe use in a number of genetically engineered plants (e.g., rice, corn, cotton and soybean varieties). The regulatory sequences from rice are the Gns9 promoter Gt1 promoter, gt1 signal peptide, and the RAmyl 1A terminator (see details below). None of the DNA regulatory sequences can cause plant disease by themselves or in conjunction with the genes that were introduced into the transgenic rice lines.

## **The Selectable Marker**

To facilitate the selection of transformed plants, the rice plants were engineered with the *hpt* gene which encodes for hygromycin phosphotransferase, an enzyme which confers tolerance to the antibiotic hygromycin. The selectable marker gene expression cassette consists of the rice glucanase 9 (Gns 9) promoter, fused to the *hpt* gene coding region, terminated by the Rice Alpha Amylase 1A (RAmyl1A) terminator.

The *hpt* gene (Kaster et al., 1983; Waldron, 1997) was isolated from the donor organism *E. coli*, and encodes the 341-amino acid enzyme, hygromycin B phosphotransferase (Hpt). Hpt inactivates the antibiotic hygromycin by adding a phosphate, which allows cells containing this gene to grow on medium containing hygromycin. The *hpt* gene is devoid of inherent plant pest characteristics. The gene is driven by the Glucanase 9 (Gns9) promoter derived from rice, a tissue specific promoter that is only expressed during the plant cell culture phase of the transformation process (Huang et al., 2001). Since the promoter is only expressed during the cell culture regeneration process, it is not active in any tissue of the mature plant and therefore no *hpt* is expressed in the tissues of the plant. The *hpt* gene is terminated by the rice Alpha amylase 1A (RAmyl 1A) terminator. Because both the promoter and terminator are regulatory sequences from rice, they should pose no environmental risks.

## **The Gene of Interest**

The rice plants were engineered to express the gene for human lactoferrin. The gene of interest consists of the Glutelin 1 (Gt1) promoter and glutelin 1 (gt1) signal peptide, the coding sequence for human lactoferrin, and is terminated by the nopaline synthase (*nos*) 3' terminator from *Agrobacterium tumefaciens*.

The Glutelin 1 (Gt1) promoter from rice is used to drive the production of the human lactoferrin gene, but the promoter sequence itself does not encode a protein. This promoter normally drives expression of the glutelin seed storage protein, and in this gene expression cassette it preferentially directs expression of lactoferrin in seeds and is active in the endosperm cells of the seed while the seeds are maturing on the plant. It is active between seven to thirty days after pollination (Okita et al., 1989). The gt1 signal peptide, also from the rice Gt1 gene, is used to target the lactoferrin protein to Type II protein bodies within the cells of the endosperm (Nandi et al., 2002). Both of these regulatory elements ensure that the lactoferrin protein is produced only in the mature seeds and not in other parts of the plant. The *nos* sequence from *Agrobacterium* sp. terminates the gene and does not encode a protein.

## **Characterization of the Engineered Plant and the Expressed Lactoferrin**

The applicant submitted a Safety Assessment consisting of a detailed analysis addressing all of APHIS's requested permit application information. The applicant's studies conclude: 1) no sequence homology of the recombinant lactoferrin to known toxicants, allergens, or proteins likely to harm non-target organisms, 2) there are approximately 6 copies of the lactoferrin gene in the engineered rice lines and they are stably inherited over multiple generations, 3) the physical and molecular properties of the recombinant lactoferrin are similar to those of human lactoferrin, 4) like most proteins, the recombinant lactoferrin is denatured by cooking and its digestive properties are similar to human lactoferrin, 5) there are no anticipated impacts on threatened and endangered species by the transformed rice plants. The information the applicant supplied is summarized below.

### **Sequence homology to known allergens or toxicants**

Ventria searched against a database of known allergens, identified in the SWISS-PROT and TrEMBL databases, and the Food Allergy Research and Resource Program (FARRP) allergen database ([www.allergenonline.com](http://www.allergenonline.com)) and did not identify human lactoferrin as an allergen.

Ventria searched for sequence similarities and found there is 70% homology with bovine lactoferrin. The company noted that there is little clinical information indicating bovine lactoferrin is a milk allergen. One study was cited where one milk-allergic infant out of 92 was reported as mono-sensitized to bovine lactoferrin. Ventria obtained samples of sera from two patients reported as mono-sensitized to bovine lactoferrin and found that neither serum reacted with recombinant lactoferrin. Ventria concludes that even rare sensitization by bovine lactoferrin is not relevant to the use of recombinant human lactoferrin.

Ventria searched the FARRP database for other sequence similarities and found a 52% amino acid sequence homology between human lactoferrin and chicken egg ovotransferin (conalbumin), which is a known allergen. Chicken egg ovotransferin (conalbumin) was the only protein with an identity greater than 50% (52.6%). Ventria states that because there is no immunological cross-reactivity between chicken egg ovotransferin and human lactoferrin or recombinant lactoferrin, it is not a safety issue.

### **Molecular characterization**

Ventria submitted Southern blot analysis data demonstrating that there are approximately 6 copies of the lactoferrin coding sequence integrated into the rice genome for line LF164-12. This line (LF164-12) to be planted is in the 8<sup>th</sup> generation and the Southern blot analysis showed that all the bands from the R<sub>0</sub> generation have been inherited as a single linkage unit. Thus stable inheritance of the lactoferrin gene has been observed over multiple generations.

The human milk lactoferrin gene sequence was based on the DNA sequence from GenBank accession number U07643 but the coding sequence was re-synthesized with rice preferred codons to enhance its expression in the rice plants. Ventria submitted data demonstrating that the amino acid sequence remained identical to the non-recombinant human form of lactoferrin.

## **Protein characterization**

Ventria analyzed the chemical and physical properties of the recombinant lactoferrin (rhLF) compared to purified human lactoferrin (hLf). Molecular mass, isoelectric focusing point, solubility, physical appearance, sensitivity to pepsin and pancreatic digestion, iron binding and release capacity, receptor binding affinity, immunogenicity, binding to Porins, bacteriostatic effect, HPLC profile, peptide mapping, and N-terminal sequence were found to be identical. The only biochemical difference detected between the recombinant lactoferrin and the purified human lactoferrin were differences in the glycosylation patterns. Even though the recombinant protein has been glycosylated, Ventria has demonstrated that the digestibility between rhLF and hLf are similar, showing that the stability of the protein has not been affected by glycosylation.

## **Potential environmental and animal exposure levels**

The gene intended for protein expression in these field plantings codes for human (*Homo sapiens*) lactoferrin. Lactoferrin is an iron-binding glycoprotein (~80 kDa) consisting of approximately 700 amino acids and is found in milk, tears, saliva and other mammalian body secretions (Ekstrand, 1994). In human milk, it is a major component of whey protein with 6-8 grams/liter in colostrum (foremilk) and 2-4 grams/liter in “mature” milk (Harper, accessed 2005). Bovine (cow) milk contains 5-20 times less by weight. Lactoferrin is reported to have broad antimicrobial properties (against bacteria, fungi and viruses), an immune system regulatory function, anti-inflammatory properties, antioxidant activity, toxin binding properties and anti-cancer activity (Harper, accessed 2005).

Lactoferrin may exist in several forms: iron deficient (apo-form), iron sufficient (holo- form), and an “activated” form (Naidu, 2002). Which form it takes depends primarily upon pH, the citrate/bicarbonate ion ratios and the iron content of the medium. Treatment of lactoferrin under specific chemical conditions results in “activation” of lactoferrin. The iron deficient (apo-) and activated forms, due primarily to their ability to sequester iron, are most active in their antimicrobial properties (Naidu, 2002).

Ventria submitted and APHIS reviewed lactoferrin protein expression data from roots, stems, leaves, pollen, booting panicle, peduncle, immature seed, mature seed, and husks for LF164-12. There was no detectable expression in any tissues except immature seed, mature seed and husks. The levels of expression were 1094 µg/g in immature seed, 5262 µg/g in mature seed, and 63 µg/g in husks. The expression level in mature seeds is approximately 4 mg/g on a fresh weight basis in whole seeds (with husks). When the seeds are dehusked (moisture level of about 12-14%) and the material is ground into flour, the expression level is approximately 5 mg/g. Assuming human milk contains 2-4 mg of lactoferrin per gram, this is on the same order of magnitude as the amount expressed in the transgenic rice seed. The expression from isolated husks is due to the carryover of the endosperm tissues during the dehusking process. It is very difficult to eliminate all of the endosperm tissues when the seeds are mechanically dehusked, thus there is a slight carryover that is detectable (<1%). When the husk is removed carefully by hand there is no detectable amount of lactoferrin found.

## **Thermal stability and sensitivity to gastric digestion conditions**

It is the intention of Ventria to purify the lactoferrin from the rice grain to use in various products, not to sell the rice grain itself. Any potential consumption of the lactoferrin rice grain is unlikely given the conditions of the test.

Rice is normally consumed cooked by humans, so potential consumption of lactoferrin from the transgenic rice would normally involve cooking the rice grain. According to (Juliano, 1985) when rice is parboiled (10 min at 121°C) its starch, protein and fat are disrupted. Ventria conducted laboratory tests on the thermal stability of plant derived lactoferrin under more appropriate cooking conditions (using commercial rice cookers which cook rice for ~ 20 minutes). After cooking for 20 minutes, lactoferrin protein could no longer be detected by Western blots.

Ventria has supplied data demonstrating the similarity between the recombinant lactoferrin and purified human lactoferrin so no unanticipated effects due to digestion of the recombinant lactoferrin are anticipated. In gastric digestion studies, Ventria examined susceptibility of lactoferrin to pepsin digestion using the ILSI Health and Environmental Sciences Institute protocol (Thomas et al., 2004). This method monitors the digestion of a protein in simulated gastric fluid at 37°C over time. Using this *in vitro* protocol, Ventria's rice-derived lactoferrin (rhLF) is equivalent to native human lactoferrin (hLF) which is rapidly degraded (<30 sec) in gastric fluid. This study demonstrated that the plant-derived form of human lactoferrin degrades with the same kinetics as human-derived lactoferrin.

The effects of Ventria's recombinant lactoferrin on the health and intestinal flora of chicks were analyzed (Humphrey et al., 2002). In this study the growth rate and intestinal structure of broiler chicks fed varying amounts of Ventria rice for 21 days after hatching were analyzed. The results showed that lactoferrin improved the health of the chicks and growth rates were improved over the control. These results indicate that the rice containing the recombinant lactoferrin should not be harmful to the health of avian species if ingested.

Lactoferrin is an iron binding protein, and therefore Ventria's lactoferrin rice line contains higher amounts (4.21 mg/100g) of iron than the non-transgenic cultivar Taipei 309. Even though the level of iron is elevated, it is still within the range of iron reported in paddy rice (2.8 – 5.7 mg/100g). Therefore it should not pose a risk for iron overdose in non-target organisms.

Bovine Lactoferrin is listed on the Food and Drug Administration's, Summary of All GRAS (Generally Recognized As Safe) Notices (FDA, 2001a), which includes use as a treatment to minimize growth of bacteria on fresh beef as a component of an antibacterial spray (FDA, 2003). "Milk-derived lactoferrin" is also listed with FDA in their Summary of GRAS Notices for use as an ingredient in sports drinks and functional foods (FDA, 2001b).

Lactoferrin, isolated from bovine milk or whey (as a by-product of cheese making), is readily available over the counter as a nutritional supplement or as a component of baby formula in some countries. Lactoferrin is also used as an additive to toothpaste and mouthwash products (<http://www.biotene.com/>). Lactoferrin supplements are widely available over the counter. For example, over the counter lactoferrin supplements typically contain 300 mg lactoferrin/tablet

(<http://www.health-n-energy.com/lactoferrin.htm> ) with suggested dosages of 1-3 tablets per day (<http://www.health-marketplace.com/article-lactoferrin.htm>).

In these field production sites, lactoferrin will be expressed exclusively in the seed by the use of a seed-specific promoter. No expression of the gene will occur in other plant tissues. Since lactoferrin in rice grains is quickly denatured by cooking, humans or other animals would have to consume raw uncooked rice to ingest the lactoferrin from these plantings. Given the history of safe use of lactoferrin supplements in food and oral hygiene products and as nutritional supplements, and the unlikely event that large quantities of uncooked rice would be consumed from these field sites, APHIS concludes that humans are unlikely to be significantly affected if accidental ingestion of raw rice containing lactoferrin were to occur.

## **VII. Description of the Field Test/Affected Environment**

### **Purpose**

The purpose of this proposed introduction is for grain production for product development. The regulated introduction is proposed for planting between March and April 2005.

APHIS has reviewed protocols that were proposed by Ventria to prevent the escape and dissemination of these plants submitted on APHIS Form 2000. In addition, Standard Operating Procedures (SOPs) submitted by Ventria identify more detailed instructions and provide additional guidance.

### **Field Plot Design, Breeding Procedures and Agricultural Practices**

#### **Plot Design and Location**

Field test plots will be separated by a distance of at least ¼ mile from other rice fields in order to maintain confinement. Ventria will monitor for commercial rice production and scout for red rice within this ¼ mile distance. These plots will be surrounded by a fallow zone of 50 feet. The fallow zone may be planted with a low-growing crop that will not be used for food or feed to prevent erosion. The rice will be grown in flooded fields and in contiguous paddies.

The location of the field planting chosen by Ventria is free of weedy red rice (Bryan, 2005). The area has not had a history of rice farming; soybean and corn have been grown in the area for many years. Therefore there has not been the opportunity for a weedy rice population to develop.

#### **Agricultural Practices**

The rice will be allowed to self pollinate to produce seed. No breeding operations will occur under this permit. Agricultural practices consistent with growing healthy rice plants will be used. Weeds will be controlled by herbicide applications. If necessary, pesticides such as insecticides and/or fungicides will be used to control insect pests and disease that would diminish the health of the plant and subsequent grain yield. Any pesticides used will be applied by personnel trained in their use and application. The field will be monitored for noxious weeds and other plant pests during the growing season. Three times during the growing season the plants will be inspected for traits such as weediness, resistance/susceptibility to insects or

disease, or unusual differences in plant growth or morphology. The plot will be inspected weekly while conducting agricultural practices. The areas nearby will be growing other crops such as corn and soybeans beyond the 50 foot fallow zone. EPA registered chemical pesticides are likely to be used to control insect pests on these crops.

### **Field Observation and Monitoring**

The applicant has thoroughly described field site monitoring and management practices that should provide the necessary degree of biological and physical confinement. Confinement practices under the permit include the following:

- The test site will be located more than ¼ mile from the nearest non-engineered, rice planting;
- The applicant will provide APHIS and State regulatory officials information on the location of the nearest rice plants that are not part of the field test;
- The applicant has provided APHIS and State regulatory officials a map of the proposed test site. One month after planting the applicant will submit a detailed map of the planted test site. Borders of the site will be described with coordinates;
- The applicant will use screens on irrigation outlets to prevent movement of seeds/seedlings out of the field with water used to flood the field. They will also employ flooding methods which create a closed system so that ungerminated seeds can not leave the field site;
- A zone of 50 feet will be maintained surrounding the field test site. A non-food or non-feed cover crop may be planted in this zone to prevent erosion or may remain fallow; and
- In the subsequent growing season following harvest of the fields, the production site and the 50 foot fallow zone may not be planted with rice unless transgenic rice is repeated. If the same crop does not follow in subsequent years, the site will be monitored for volunteer rice plants throughout the next year. Any volunteer rice plants will be destroyed before flowering.
- Ventria will use equipment dedicated to this field test as outlined in their SOPs. This equipment will not be used for any other purposes during the course of the field test, and after the field test is completed, all equipment will be thoroughly cleaned and inspected to ensure that all genetically-engineered seed and other plant material has been removed and destroyed.
- Even though weedy red rice is not currently present in the area, Ventria will scout for red rice during the entire growing season both within the growing plots and for ¼ mile from the production fields. Any red rice found will be destroyed and will not be allowed to flower. Ventria will also inform APHIS if any red rice is found within the ¼ mile zone or in their production plots.



### **Alteration in susceptibility to disease or insects**

There has been no intentional genetic change in these plants to affect their susceptibility to disease or insect damage. Neither the selectable marker gene, *hpt*, nor the lactoferrin gene is expected to alter the susceptibility of the transgenic rice plants to disease or insect damage. Execution of the prescribed periodic monitoring of the field plots will allow the detection of any unexpected infestation by plant disease organisms or animal pests. Ventria is required to report any such unanticipated effects to APHIS under the terms of the permit. See 7 CFR § 340.4(f)(10)(ii).

### **Termination of the field test and final disposition of the test plants**

At harvest, the seed will be machine harvested using a dedicated combine, dried and cleaned in a designated staging area adjacent to the field location using a dedicated dryer and cleaner. The seeds will be stored in dedicated storage bins on site and will be processed as desired. During the process the seed will be dehusked using a dedicated dehusker on site and will be milled on site in a dedicated staging area at the field site using a dedicated mill. Milled rice flour will be shipped to designated locations for subsequent processing. Any devitalized waste material from the milling operation will be returned to the field test site and incorporated into the soil. All the operation up to milling will be performed in an APHIS inspected dedicated staging area and dedicated equipment. Any material will be shipped only after milling. There will be no shipping of the viable seeds from the dedicated processing site to any other site.

After harvest, as soon as possible as the weather allows, Ventria will burn and disk the fields to degrade all plant material in the field to remove and decompose any remaining seed. Off-season flushing with water may also be used to accelerate the germination of any remaining viable seed prior to winter.

Ventria plans to grow the lactoferrin rice in the same location in subsequent years. However, if a change to a different crop is anticipated, the field will be fallowed for one cropping season after the harvest of the transgenic lines. During this 18 month period (the period between harvest year 1 to planting year 3), the field will be monitored and managed to germinate and destroy any live seed. Ventria employs a “pureland” procedure to control volunteers. This includes flushing the field with water during the growing season to germinate weed and rice seed, drying the field to kill seedlings, and then disking to dry and kill seedlings. This process is repeated three times.

### **Security of the field test plot**

The test site is expected to provide adequate physical security. The contract farmer is the owner of the field test site. All the surrounding fields outside the food/feed crop fallow zone will all be planted to soybean or corn. The site is not prone to flooding. The closest body of water is Lake Tywappity which is located about 4 miles to the east. The Mississippi River is located about 8-10 miles east of the planting site.

## **VIII. Potential Environmental Impacts**

**Alternative 1:** No action/denial of the permit request.

Field release and research would not be allowed and no environmental impact would result.

**Alternative 2:** Issue the permit with APHIS standard permit conditions.

The proposed field test is a controlled release of the regulated article into the environment. The risks associated with the introduction of genetically engineered organisms are the same kind as those associated with the introduction into the environment of unmodified organisms or organisms modified by other genetic techniques.

APHIS BRS has considered the safety assessment information presented by the applicant and independently assessed the risk of this protein to the environment, to agricultural practices, to non-target organisms and to plant health. Such an assessment of risk considers two different components: hazard and exposure. Hazard is the toxicity or actual potential for harm of an event and exposure is the likelihood that the event will occur. The product of hazard times the exposure is the actual risk. Data regarding exposure has several components: (1) where in the plant are the proteins produced; (2) how much protein is produced; (3) which organisms are likely to consume these tissues; and (4) how likely is consumption to cause harm. After careful analysis, we found no identifiable hazards and determined that environmental exposure and exposure to non-target organisms would be extremely low or none. There is little potential for environmental exposure, since the seed will be harvested and experience shows that only a small portion (< 5%) of the seed is dropped during harvesting operations. Seed husks and other post-harvest waste remaining on the field will be burned.

Therefore the actual risk is low or none.

### **Potential for Persistence of the Modified Plants in the Environment**

Rice is a highly domesticated aquatic crop species, which grows exclusively in highly managed aquatic ecosystems. It is non-competitive with weed species and is self-pollinated; errant seed does not pose a threat to wild or managed, non-flooded ecosystems. Taipei 309 is a *Japonica* type rice which germinates very quickly and has no dormancy period (FAO, Accessed 2005). Japonica rice seed loses viability quickly under ambient conditions. Therefore the likelihood of persistence of seed in the environment is minimal. The applicant has also described methods that will be employed to minimize the persistence of rice seed in the environment (see “Termination of the field test and final disposition of the test plants” section above). The proposed procedures for confinement of the plant material and for termination of the field test, as proposed by Ventria and described in this document, should be sufficient to ensure that none of the genetically engineered plants persist in the environment.

Previous field data reports for small scale trials of lactoferrin producing rice have not reported differences in weediness, resistance/susceptibility to insects or disease, or unusual differences in plant growth or morphology in 5 generations of field tests. No change in general agronomic traits (leaf color, shape, growth habit, days to pollen shed, days to maturity and seed germination rates) have been observed in the genetically-engineered plants that might affect the plant’s ability to persist in the environment. The presence of human lactoferrin in the rice seeds has not altered seed germination rates.

## Potential for Gene Transfer

### Movement by outcrossing

As outlined in Section V, rice is not sexually compatible with plant species outside of the *Oryza* genus, there are no sexually compatible species of *Oryza* other than *Oryza sativa* growing in the United States, the pollen is very short-lived, and pollen does not travel for long distances. With proper isolation distances maintained between Ventria's rice and other cultivars of rice, gene escape would be highly unlikely. Temporal isolation can further reduce the likelihood of effective pollination and fertilization. Ventria has described factors that will minimize dissemination of pollen to receptive, sexually compatible plants and persistence of the plant material after the conclusion of the field test. Effects of dissemination of pollen will be mitigated in this test *via* reproductive isolation distances of greater than ¼ mile.

Another mechanism for gene escape would be outcrossing with weedy/red rice. The location of the field planting chosen by Ventria is free of weedy red rice but Ventria will be required to monitor for and rogue any red/weedy rice that might appear in or near the field site. Monitoring for red/weedy rice will be required within the ¼ mile isolation distance. Careful monitoring and rouging of red/weedy rice populations within or adjacent to a field test site before flowering or seed set will preclude movement of transgenes to red rice via cross pollination and/or the persistence of the gene in the seed bank of red rice.

Because this EA is being written months before planting, it is impossible to know how close the nearest rice fields will be. Based on past plantings it is estimated that closest rice fields will be more than 10 miles away (Bryan, 2005). Ventria will be required to maintain an isolation distance of at least ¼ mile, but whether there will be greater than ¼ mile isolation, as well as, temporal isolation cannot be firmly assessed at this time. Because rice pollen viability declines within a few minutes, a distance of at least ¼ mile between any rice plantings is an effective means to mitigate gene flow. Given the small percentage of rice production in Scott County, APHIS concludes that pollination of any rice plant outside the ¼ mile isolation distance, would be at *de minimis* levels. APHIS concludes these measures meet the definition of confined field trial as developed by USDA's Agricultural Research Advisory Committee (ABRAC) (<http://www.aphis.usda.gov/brs/pdf/abrac%201991.pdf>).

### Movement by animals

To protect against unintentional consumption and movement of seeds by animals, Ventria will monitor the field sites during the growing season for any animal pests that consume rice and measures will be taken to discourage their presence. Flooded rice fields, while the crop is in the field, are not attractive to land-based mammals so this discourages the movement of seeds by rodents and other small mammals. Measures will be taken to inhibit waterfowl and animal predation and movement of seed. These will include burning stubble and straw as soon as possible after harvest, leaving the fields dry in the fall and winter to discourage waterfowl from using the area as a flooded habitat, maintaining an open 50 foot fallow area to reduce rodent movement, and the use of bait stations for rodents in warrens.

Rice seed is a highly digestible grain that does not pass in a viable form through waterfowl, the most likely animals to consume grain in rice fields (Powers et al., 1978; Smith and Sullivan,

1980; Drobney, 2005). In a Louisiana study conducted in Vermillion parish, a rice growing area, Powers et al. (1978) checked the gut of 51 hunter killed waterfowl, and identified, counted and germinated the seed found. They found that the seeds of red rice, which are large and have a thin seed coat did not pass intact. Drobney (2005) has observed “several miles” of bird intestines and has never found intact rice seed. Smith and Sullivan (1980) used the information from the Power’s study to design chemical-free, weed-reducing strategies in Arkansas rice producing areas by flooding rice fields to attract waterfowl and reduce weed populations. Therefore it is highly unlikely that rice seeds can be dispersed in bird feces.

### **Movement of seeds by water**

Since rice seeds are most likely to move about during the first 2 weeks of planting in a flooded field, Ventria will use screens on the rice boxes or exit pipes to catch any seed that might float to the surface to prevent escape. In addition Ventria will use flooding methods which will create a closed system so that ungerminated seeds can not leave the field site.

### **Movement by human error**

As outlined in Section V, one mechanism that could contribute to the breakdown of confinement and movement of seed is human error. The most reliable means of preventing this is to maintain and reinforce stringent standard operating procedures. Ventria has submitted Standard Operating Procedures (SOPs) as a part of the permit submission and these have been reviewed by APHIS. In addition to having stringent SOPs, all the harvested seeds will be stored in dedicated storage bins on site and seeds will be processed on site. During the processing, the seed will be dehusked using a dedicated deharker on site and will be milled on site in a dedicated staging area at the field site using a dedicated mill owned by Ventria. Only Ventria personnel or employees assigned and trained by Ventria will be allowed to handle any seeds. Employing these methods along with following their SOPs will minimize the possibility of human error moving seed into other fields.

### **Impacts from the use of the marker gene**

The selectable marker gene hygromycin B phosphotransferase, *hpt*, is also present in these plants, but Ventria has provided data which show that it is not expressed in mature tissues or seeds for the transformed rice plants. This is because it is driven by the Glucanase 9 promoter which is only expressed during the cell culture phase of the transformation system. Therefore APHIS has determined that in this case the presence of the *hpt* gene will have no significant environmental impacts.

### **Impact on native floral and faunal communities**

Ventria has assayed for lactoferrin in the soil surrounding the roots and germinating seeds of the engineered plants, and has supplied data indicating that none has been detected. Based on the lack of toxicity of the proteins that will be produced and the prescribed permit conditions to minimize any seed remaining on the soil surface, APHIS concludes that there will be no significant effect on any native floral or faunal species listed by U.S. Fish and Wildlife for Scott County, Missouri <http://midwest.fws.gov/endangered/lists/missouri-cty.html>.

## **Vertebrate Animals**

In these proposed field tests lactoferrin is preferentially expressed in the seeds of the genetically engineered rice plants. The most likely vertebrate animals that would be exposed to lactoferrin in rice seed are the seed eaters, e.g. rodents and birds. APHIS believes that consumption of these seeds would pose no significant risks for the following reasons:

1. If any seeds containing lactoferrin were to be ingested, the lactoferrin would be digested in the digestive tract of these animals. Bovine and milk-derived lactoferrins are listed for specific uses in the Food and Drug Administration's Summary of All GRAS Notices. Recombinant human lactoferrin has been shown to be safe if ingested by avian species. Carnivores that might consume the vertebrate animals that had eaten the rice seeds are not expected to be exposed to lactoferrin as the protein should have already been digested.
2. In order to minimize exposure by seed consumption, Ventria will be required under the permit conditions to monitor the test fields after harvest to incorporate any remaining plant material into the soil.
3. APHIS will inspect the site during planting, harvesting and seed processing to ensure all permit conditions are met. APHIS concludes there would be no significant effect on any vertebrate animal.

## **Invertebrate Animals**

The most likely invertebrate animals would be exposed to the lactoferrin in the rice seed would be seed-feeding invertebrates and soil-dwelling organisms. Arthropods such as insects and crayfish that consume seeds and snails that consume all plant parts are considered plant pests and will likely be controlled by pesticides applied during the time course of the field tests.

Since lactoferrin production is limited to the seeds, and the seeds will be harvested from the field and processed on site by Ventria, it is unlikely that any soil organisms will be exposed to lactoferrin resulting from the proposed field tests. Although lactoferrin is not produced in roots, seeds that remain in the field would contain lactoferrin. Based on a worst-case analysis, where 5% of the seeds would remain, the amount of lactoferrin would be about 400 grams per acre (assuming a yield 4500 lbs per acre and 4 mg lactoferrin per gram of seed). This is equivalent to approximately 100 mg per square meter. Ventria has submitted data demonstrating that lactoferrin disappears as seed germination and seedling growth proceeds. But as a precaution, APHIS will require Ventria to monitor lactoferrin levels in the soil (see Appendix II).

Earthworms constitute approximately 90% of the invertebrate soil biomass (Ville et al., 1995) but since Ventria grows the rice crop under flooded conditions it is unlikely that earthworms will colonize these fields and would thus not be exposed to lactoferrin containing seeds.

APHIS therefore concludes there would be no significant effect on any invertebrate species.

## **Aquatic Organisms**

It is unlikely that any aquatic organism would be exposed to rice seed expressing lactoferrin because the closest major body of water is Lake Tywappity which is approximately 4 miles from

the field test site. It is unlikely that aquatic organisms will establish themselves in the flooded rice fields due to the ephemeral nature of the flooding. The farm Ventria is proposing as its production site has not grown rice in the past. For this reason, it is not expected to be inhabited by fish or typical aquatic habitat arthropods such as crayfish <http://www.conservaion.state.mo.us/nathis/>. APHIS therefore concludes there would be no significant effect on any aquatic organisms.

### **Native Floral Communities**

The proposed field test sites are located on land that has been under constant agricultural use for the past 40 years. APHIS concludes there would be no significant effect on any native floral species.

### **Alteration in susceptibility to disease or insects**

There has been no intentional genetic change in these plants to affect their susceptibility to disease or insect damage. Neither the selectable marker gene, *hpt*, nor the lactoferrin gene is expected to change any plant pest characteristics. There is no reason to believe that these or similar characteristics are different between the genetically engineered and non-engineered plants. The selectable marker gene designed to provide tolerance to the hygromycin is not expected to alter the susceptibility of the transgenic rice plants to disease or insect damage. Execution of the prescribed periodic monitoring of the field plots will allow the detection of any unexpected infestation by plant disease organisms or animal pests. Ventria is required to report any such unanticipated effects to APHIS under the terms of the permit. See 7 CFR § 340.4(f)(10)(ii).

### **Impact on Existing Agricultural Practices**

No impact on existing agricultural practices is expected. Ventria will employ agricultural practices consistent with growing healthy rice plants. Weeds will be controlled using herbicide applications. If necessary, insecticides and/or fungicides will be used to control pests such as rice water weevil, armyworm, rice stalk borer, rice blast, rice sheath blight, and other rice diseases that would diminish the health of the plant and reduce grain yield. Any approved pesticides will be applied by trained personnel in their use and application. The plot will be inspected at least weekly during the growing season. In 2004, Scott County produced only about 0.5% (or less than 1%) of all the rice produced in Missouri (<http://agebb.missouri.edu/rice/ricenews.htm>). Thus, Scott County, Missouri, is not a major producer of rice.

### **Impact on adjacent row crops**

Two row crops (soybean and corn) will be grown on the same farm and on adjacent farms. Pesticides used to control pests on the transgenic rice plants will be similar to those used on the adjacent crops. The permit conditions will stipulate a fallow zone of 50 feet be maintained between Ventria's rice and soybean and corn grown on the adjacent fields. Should any seed be picked up by birds or other animals and dropped into these fields it would not be likely to grow due to the lack of flood irrigation. No environmental impacts on nearby crops are expected.

## **Fate of Transgenic DNA**

Transgenic DNA is no different from other DNA consumed as part of the normal diet. Genetically engineered organisms have been used in drug production and microbial fermentation (cheese and yogurt) since the late 1970's. More than 500 million cumulative acres of engineered food and feed crops have been grown and consumed world wide in the past seven years (International Service for the Acquisition of Agri-biotech Applications, (ISAAA) at: [http://www.isaaa.org/kc/CBTNews/press\\_release/briefs30/es\\_b30.pdf](http://www.isaaa.org/kc/CBTNews/press_release/briefs30/es_b30.pdf)). The FDA has not reported any significant concerns with bioengineered food and feed currently on the market. The EPA has exempted from a tolerance DNA that encodes currently registered plant incorporated protectants because of a lack of toxicity (FR 66 37817-37830).

There have been several studies in humans and animals following the fate of DNA once consumed (Beever and Kemp, 2000; Mercer et al., 1999; Duggan et al., 2000; Duggan et al., 2003; Chambers et al., 2002; Netherwood et al., 2002; Einspanier et al., 2001). The majority of DNA consumed is degraded in the gastro-intestinal tract although this degradation is not 100% efficient. There is evidence that both transgenic and plant DNA can move from the GI tract lumen to other areas of the body and that this is a normal occurrence. No risks have been identified as a result of this movement.

Transfer and expression of DNA from the plant to bacteria is unlikely to occur due to several known impediments. First, transgene DNA promoters and coding sequences are optimized for plant expression, not prokaryotic bacterial expression, and the bacteria must be competent to accept DNA. Gebhard and Smalla (1999) and Schluter *et al.* (1995) have studied transgenic DNA movement to bacteria and although theoretically possible, it occurs at extremely low rates (approximately 1 in  $10^{-14}$ ). Many genomes (or parts thereof) have been sequenced from bacteria that are closely associated with plants including *Agrobacterium* and *Rhizobium* (Kaneko et al., 2000; Galibert et al., 2001; Wood et al., 2001; Kaneko et al., 2002). There is no evidence that these organisms contain genes derived from plants. Koonin *et al.* (2001) and Brown (2003) presented reviews based on sequencing data that revealed horizontal gene transfer occurs occasionally on an evolutionary time scale of millions of years.

## **Impacts on Human Health**

Since the field test is on an isolated site on privately owned property, the public will not be exposed to the plants nor will they be exposed to the protein through pollen because lactoferrin is absent from the pollen. The seeds are unlikely to be mixed with seeds intended for human or animal consumption because of numerous measures (described in Appendix II) and APHIS inspections during harvesting and processing. All the harvested seeds will be stored in dedicated storage bins on site and seeds will be processed on site. During the processing the seed will be dehusked using a dedicated dehusker on site and will be milled on site in a dedicated staging area at the field site using a dedicated mill owned by Ventria. There are no rice driers, mills or rice seed processing facilities present in Scott and nearby Cape Girardeau County.

Ventria proposes to use recombinant human lactoferrin for the general population as supplements in yogurts, meal replacement and performance beverages, bars (for example granola bars), and in nutritional supplement drinks. Ventria also proposes to use lactoferrin in the preparation of medical foods such as oral rehydration solutions.

The use of the purified product is not regulated by APHIS. The safety of such use is regulated by the FDA. Any food or feed uses of transgenic plants must comply with the requirements of the Federal Food Drug and Cosmetic Act.

The FDA regulates human biologics, and human and animal drugs derived from bioengineered pharmaceutical plants intended for therapeutic, preventative, or diagnostic purposes. Biological products and drugs for use in humans are regulated by the Center for Biologics Evaluation and Research (CBER) and Center for Drug Evaluation and Research (CDER) under authority of the Public Health Service Act (PHS Act) (42 U.S.C. 262 *et seq.*) and the Federal Food, Drug, and Cosmetic Act (FD & C Act) (21 U.S.C. 301 *et seq.*). FDA also regulates animal drugs derived from bioengineered pharmaceutical plants, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, or to alter the structure or function of the animal. New animal drugs and animal feeds containing new animal drugs are regulated by the Center for Veterinary Medicine (CVM) under authority of the FD&C Act. The FDA regulations are found at Title 21 of the Code of Federal Regulations (21 CFR).

### **Effects of field test on Threatened and Endangered Species**

The proposed field tests are controlled releases of the regulated article into the environment in Scott County, Missouri. The field site is also close to adjacent Cape Girardeau County. Ventria's future plans may include growing in Mississippi County. Neither the engineered rice plants nor the lactoferrin and *hpt* genes will affect any non-target organism including any threatened and endangered species (TES) listed in Scott, Cape Girardeau, and Mississippi Counties, Missouri. An analysis of TES distribution in these Counties using the U.S. Fish and Wildlife databases (<http://ecos.fws.gov/ecos/index.do>) and (<http://midwest.fws.gov/endangered/lists/missouri-cty.html>) lists a bat species *Myotis sodalis* (Indiana bat), two bird species; *Haliaeetus leucocephalus* (Bald eagle) and *Sterna antillarum* (Least tern), two fish; *Scaphirhynchus albus* (Pallid sturgeon) and *Potamilus capax* (Fat pocketbook); and one endangered plant *Boltonia decurrens* (Decurrent false aster) as existing or once existing in these Counties.

As part of its on-going discussion with FWS on genetically engineered organisms, APHIS BRS met with the agency (2003) to discuss potential impacts of the field testing of plants producing products that would require approval from FDA's Center for Biologics Evaluation and Research (human biologics), Center for Drug Evaluation and Research (human drugs), Center for Veterinary Medicine (animal drugs) or USDA's Center for Veterinary Biologics (animal biologics) before commercial use. A worksheet was developed by the parties for these types of products (see Appendix III). Ventria and APHIS used the developed worksheet to review the procedures proposed for this test. Ventria's assessment is included in Appendix IV (TES worksheet). APHIS concludes a "no harm" decision can be reached for these proposed field tests.

### **Cumulative Environmental Effects**

This is the first field test of the engineered rice plants at this location. There is little likelihood that lactoferrin will accumulate in the soil. Ventria has assayed for lactoferrin in the soil surrounding the roots and germinating seeds of the engineered plants, and has supplied data indicating that none has been detected. However, any as yet unidentified cumulative effects



should be found in the subsequent monitoring periods required by APHIS in the same field sites in following years.

### **Special Considerations: Other Environmental Statutes and Considerations**

Executive Order (EO) 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," requires Federal agencies to conduct their programs, policies and activities that substantially affect human health or the environment in a manner so as not to exclude persons and populations from participation in or benefiting from such programs. It also enforces existing statutes to prevent minority and low-income communities from being subjected to disproportionately high and significant human health or environmental effects. Each alternative was analyzed in its ability to affect minority and low-income populations. None of the alternatives was found to pose disproportionately high or significant human health or environmental effects to any specific minority or low-income group.

EO 13045, "Protection of Children from Environmental Health Risks and Safety Risks," acknowledges that children may suffer disproportionately from environmental health and safety risks because of their developmental stage, greater metabolic activity levels and behavior patterns, as compared to adults. The EO (to the extent permitted by law and consistent with the agency's mission) requires each Federal agency to identify, assess and address environmental health risks and safety risks that may disproportionately affect children. None of the alternatives are expected to have disproportionately high or significant human health or environmental effects to children.

EO 13112, "Invasive Species", states that federal agencies take action to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological and human health impacts that invasive species cause. Rice is not invasive and is widely prevalent in the U.S. Based on the data submitted by the applicant and reviewed by APHIS, the engineered plant is not significantly different in any fitness characteristics from its parent that might increase its invasive potential.

**Alternative 3:** Issue the permit with additional conditions.

The potential environmental impacts under this alternative include all those noted under Alternative 2.

In accordance with 7 CFR § 340.4(b), APHIS has submitted a copy of the CBI deleted permit request for State notification and review. If the State has additional conditions, APHIS will consider making the State conditions part of APHIS' final permit conditions. In addition, if public comments are received regarding certain risks, APHIS will also consider making these comments part of the final decision.

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## **X. CONSULTATIONS**

**Ronald M. Drobney**

National Biological Service  
Missouri Cooperative Fish and Wildlife Unit  
University of Missouri  
Columbia, MO

**Gerald G. Bryan**

Agronomy Specialist  
University of Missouri, Extension  
Jackson, MO

**Keith Weber**

Centers for Drug Evaluation and Research  
The Food and Drug Administration

**Richard Sayre**

Fish and Wildlife Services  
Threatened and Endangered Program

## **XI. APPENDICES**

### **Appendix I. Standard Permit Conditions for APHIS Form 2000 (7 CFR 340.4)**

- (f) *Permit conditions.* A person who is issued a permit and his/her employees or agents shall comply with the following conditions, and any supplemental conditions which shall be listed on the permit, as deemed by the Administrator to be necessary to prevent the dissemination and establishment of plant pests:
- (1) The regulated article shall be maintained and disposed of (when necessary) in a manner so as to prevent the dissemination and establishment of plant pests.
  - (2) All packing material, shipping containers, and any other material accompanying the regulated article shall be treated or disposed of in such a manner so as to prevent the dissemination and establishment of plant pests.
  - (3) The regulated article shall be kept separate from other organisms, except as specifically allowed in the permit;
  - (4) The regulated article shall be maintained only in areas and premises specified in the permit;
  - (5) An inspector shall be allowed access, during regular business hours, to the place where the regulated article is located and to any records relating to the introduction of a regulated article;
  - (6) The regulated article shall, when possible, be kept identified with a label showing the name of the regulated article, and the date of importation;
  - (7) The regulated article shall be subject to the application of measures determined by the Administrator to be necessary to prevent the accidental or unauthorized release of the regulated article;
  - (8) The regulated article shall be subject to the application of remedial measures (including disposal) determined by the Administrator to be necessary to prevent the spread of plant pests;
  - (9) A person who has been issued a permit shall submit to APHIS a field test report within 6 months after the termination of the field test. A field test report shall include the APHIS reference number, methods of observation, resulting data, and analysis regarding all deleterious effects on plants, non-target organisms, or the environment;

- (10) APHIS shall be notified within the time periods and manner specified below, in the event of the following occurrences:
- (i) Orally notified immediately upon discovery and notify in writing within 24 hours in the event of any accidental or unauthorized release of the regulated article;
  - (ii) In writing as soon as possible but not later than within 5 working days if the regulated article or associated host organism is found to have characteristics substantially different from those listed in the application for a permit or suffers any unusual occurrence (excessive mortality or morbidity, or unanticipated effect on non-target organisms);
- (11) A permittee or his/her agent and any person who seeks to import a regulated article into the United States shall:
- (i) Import or offer the regulated article for entry only at a port of entry which is designated by an asterisk in 7 CFR 319.37-14(b);
  - (ii) Notify APHIS promptly upon arrival of any regulated article at a port of entry, of its arrival by such means as a manifest, customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for such purpose; and
  - (iii) Mark and identify the regulated article in accordance with 340.5 of this part.

**APPENDIX II: Proposed Supplemental Permit Conditions**  
**FOR RELEASE OF TRANSGENIC RICE**  
**USDA-APHIS-BRS Permit: 04-302-01r**

**1) Compliance with Regulations**

Any regulated article introduced not in compliance with the requirements of 7 CFR Part 340 or supplemental permit conditions, shall be subject to the immediate application of such remedial measures or safeguards as an inspector determines necessary, to prevent the introduction of such plant pests. The responsible party may be subject to fines or penalties as authorized by the Plant Protection Act.

This Permit (APHIS form 2000) does not eliminate the permittee's legal responsibility to obtain all necessary Federal and State approvals, including: (1) for the use of any non-genetically engineered plant pest or pathogens as challenge inoculum; (2) plants, plant parts or seeds which are under existing Federal or State quarantine or restricted use; (3) experimental use of unregistered chemicals; and (4) food, feed, pharmacological, biologic, or industrial use of regulated articles or their products and co-mingled plant material. In the latter case, depending on the use, reviews by APHIS, the U.S. Food and Drug Administration, or the U.S. Environmental Protection Agency may be necessary.

When the regulated article or associated host organism is found to have characteristics substantially different from those listed in the permit application, or suffers an unusual occurrence (excessive mortality or morbidity, or unanticipated effect on non-target organisms), APHIS shall be notified as soon as possible but no later than within 5 working days. In such cases, notice should be sent to:

Animal and Plant Health Inspection Service (APHIS)  
Chief, Biotechnology Permit Program Operations, Rm. 5B53  
4700 River Rd. Unit 147  
Riverdale, MD 20737

The procedures, processes, and safeguards used to prevent escape, dissemination, and persistence of the transgenic virus as described in the permit application, in APHIS-approved Standard Operating Procedures (SOPs) and, in the supplemental permit conditions must be strictly followed. The permittee must maintain records sufficient to verify compliance with these procedures, including information regarding who performed the activity. Persons performing such activities shall have received training as described in a training program submitted to and approved by APHIS. These records are subject to examination by APHIS. APHIS, BRS must be notified of any proposed changes to the protocol referenced in the permit application.

**2) Distance to other rice**

To prevent cross-pollination of the transgenic rice with other rice, there must be at least ¼ mile between the transgenic rice and any other rice not included under this permit. This ¼ mile buffer includes a 50 foot fallow zone.



**3) Scouting for Weedy Rice**

Ventria will scout for any weedy red rice within the ¼ mile isolation zone. If found, APHIS shall be notified immediately that it has been discovered, and Ventria will take appropriate measures to destroy the plants.

**4) Weeds**

Weeds in the field test plot will be controlled by herbicide treatment or by hand rouging.

**5) Perimeter Fallow Zone**

To ensure that transgenic plants are not inadvertently commingled with plants to be used for food or feed, a perimeter fallow zone of at least 50 ft. must be maintained around the transgenic test site in which no crops are grown that will be harvested or used for food or feed. The perimeter fallow zone must start outside of any permitted border rows of non-transgenic plants that are the same as, or sexually-compatible with, the regulated article, and it shall be managed in such a way as to allow detection and destruction of volunteer plants that are the same as or sexually compatible with the transgenic plants.

**6) Dedicated Planting, Harvesting and Processing Equipment**

To ensure that regulated articles are not inadvertently removed from the site, planting, harvesting and processing equipment must be dedicated to use in the permitted test site(s) from the time of planting through the end of harvesting. After this time, APHIS authorization will not be required for this equipment to be used on APHIS-permitted sites planted to the same types of transgenic crops as authorized under this permit (e.g. the same or different sites planted to the same crop with the same target protein(s) in subsequent growing seasons under an extension of this permit or a different permit), but authorization will be required from APHIS before this planting and harvesting equipment can be used on sites planted to crops not included under this permit. In the latter case, the permittee must notify APHIS, BRS and the PPQ Regional Biotechnologist and State Regulatory Official at least 21 calendar days in advance of cleaning this equipment for this purpose so that APHIS may schedule an inspection to ensure that the equipment has been cleaned appropriately.

**7) Cleaning of Equipment**

To minimize the risk of seed movement and commingling, equipment used for planting, harvesting, and processing as well as other field equipment (e.g. tractors and tillage attachments, such as disks, plows, harrows, and subsoilers) used at any time from the time of planting through the post-harvest monitoring period must be cleaned in accordance with procedures submitted to and approved by APHIS before they are moved off of the test site. Equipment used to transport harvested material must also be cleaned prior to loading and after transportation to the authorized site in accordance with procedures submitted to and approved by APHIS. Seed cleaning and drying must also be performed in accordance with the procedures submitted to and approved by APHIS so as to confine the plant material and minimize the risk of seed loss, spillage, or commingling.

**8) Use of Dedicated Storage Facilities**

Dedicated facilities (locked or secured buildings, bins, or areas, posted as restricted to authorized personnel only) must be used for storage of equipment and regulated articles for

the duration of the field test. Before these facilities are returned to general use, they must be cleaned in accordance with procedures submitted to and approved by APHIS. In this case, the permittee must notify APHIS, BRS, the PPQ Regional Biotechnologist and State Regulatory Official at least 21 calendar days in advance of cleaning facilities for return to general use so that APHIS may schedule an inspection to ensure that the facilities have been cleaned appropriately.

**9) Post Harvest**

As soon as physically possible following the fall harvest, the field must be burned and disked, and may be flooded during the off-season, to degrade the plant material. If weather does not permit burning, then the field must be disked as soon as possible. An attempt should be made to schedule the harvests so that rainy conditions do not prevent disking under the unharvested plant material.

**10) Post Harvest Monitoring**

For the cropping season following harvest of the transgenic lines, unless the fields will be planted back into transgenic lines of the same target molecule (with the appropriate APHIS permit), the field test site may be reflooded to promote growth of any rice seed which may have escaped harvest the previous year. The field test site and perimeter fallow zone must be monitored for volunteer rice plants monthly whenever weather conditions are favorable for seed germination **at least until October 31, 2006**, and volunteers must be eradicated by mechanical destruction or with a herbicide prior to flowering.

**11) Post Harvest Land Use Restrictions**

Production of food and feed crops at the field test site and the perimeter fallow zone is restricted during the growing season that follows harvest or termination of the field test. Permission must be obtained from APHIS, BRS prior to planting any food or feed crop at the field test site and perimeter fallow zone during the post-harvest monitoring period. Requests for such permission are not encouraged and will not be granted in cases where there is a reasonable potential for plant material derived from or originating from the regulated articles to become mixed with the proposed food or feed crop during harvesting.

**12) Reports and Confidential Business Information**

Confidential Business Information (CBI) will be handled according to the APHIS policy statement at 50 F.R. 38561-63.

**13) Pre-Planting Notification**

The permittee is required to notify the APHIS, BRS Permits office and the appropriate PPQ Regional Biotechnologist and State Regulatory Official(s) at least 7 calendar days before the anticipated planting date.

**14) Planting Report**

Within 28 calendar days after planting, submit a planting report that includes the following information for each field test site:

- A. A detailed map of the planted site with sufficient information to locate it, that includes: the state, county, address, along with GPS coordinates (inclusive of the border rows of any sexually compatible plants); and
- B. The location and the approximate number and/or acres of transgenic plants which were actually planted at the test site for the target protein.
- C. The total acreage of the test plot (exclude border rows, if any).
- D. The distance from the genetically engineered plants to the **nearest** plants of the same crop which will be used for food, feed, or seed production.
- E. The actual planting date

Fax the planting report to the following APHIS personnel:

- A. The Chief, Biotechnology Risk Assessment Staff at Area Code (301) 734-8669
- B. The Compliance Staff at (301) 734-8669
- C. The State Regulatory Official (CBI-Deleted copy only)

Provide APHIS with the contact information for each field test site, and indicate if planting and harvesting equipment will be moved between authorized field test sites.

Contact information for the State Regulatory officials is located at:  
[http://www.aphis.usda.gov/brs/lt\\_sta.html](http://www.aphis.usda.gov/brs/lt_sta.html).

#### **15) Termination Report**

At least 21 calendar days before the anticipated harvest/termination of the field test the permittee is required to notify the APHIS BRS Permits office, the appropriate BRS Compliance Staff and State Regulatory Official(s)  
([http://www.aphis.usda.gov/brs/lt\\_sta.html](http://www.aphis.usda.gov/brs/lt_sta.html)).

#### **16) Field Test Data Report**

Within 6 months after the end of the field test (final harvest or crop destruct), the permittee is required to submit a field test data report to the BRS Permits office. Field test reports shall include: methods of observation, resulting data, and analysis regarding all deleterious effects on plants, nontarget organisms, or the environment.

#### **17) Monitoring Report**

Post-harvest/post-season monitoring report must be submitted within 3 months after the end of the monitoring period that includes the dates the field site and perimeter fallow zone were inspected for volunteers, the number of volunteers observed, and the actions taken.

#### **18) Unauthorized Release**

APHIS shall be notified orally immediately upon discovery and in writing within 24 hours in the event of any accidental or unauthorized release of the regulated article.

For immediate oral notification, contact the following APHIS staff in the order indicated below.

APHIS BRS Compliance Staff at (301) 734-6363; (301) 734-6356; (301) 734-5612. You may leave a message. For emergencies, if you are unable to reach the Compliance Staff, you

may call: (301) 734-7324, (301) 734-6331, or (301)734-0029 and indicate that you wish to report an unauthorized or accidental release of a regulated article. In the event that one of these persons cannot be reached, contact:

The appropriate APHIS PPQ Regional Biotechnologist.

<http://www.aphis.usda.gov/brs/regbiot.html>

The appropriate APHIS State Plant Health Director.

<http://www.aphis.usda.gov/brs/regulatory.html>.

Unless otherwise directed, written notification should be sent to:

Animal and Plant Health Inspection Service (APHIS)

BRS Compliance Branch, Rm. 5B52

4700 River Rd. Unit 147

Riverdale, MD 20737

### **19) Inspections**

APHIS's Biotechnology Regulatory Services (BRS) and/or an APHIS PPQ Regional Biotechnologist or APHIS State Plant Health Director may conduct inspections of the test site, facilities, and/or records at any time. APHIS may invite the FDA or State Regulatory Officials to participate in these inspections. Inspections will likely correspond to the beginning of the field test, mid-season or during flowering, at and/or following harvest, and during the post-harvest monitoring period. Inspections will include examination of records that verify compliance with regulations and SOPs.

### **20) Additional Data Requirements**

- A. Permittee must monitor for lactoferrin in the soil surrounding the plants mid way through the growing season and after the crop is harvested. These data must be submitted with the field data report.
- B. Permittee must quantify the amount of lactoferrin in stem, leaves, roots and flower parts at flowering and the amount of lactoferrin in stem, leaves, roots and seeds at harvest.

## **Appendix III. FWS-APHIS TES Document**

[The document below was the basis of APHIS' discussion with the Fish and Wildlife Services discussion on how APHIS' would approach addressing threatened and endangered species issues from field testing].

### **DECISION TREE ON WHETHER SECTION 7 CONSULTATION WITH FWS IS TRIGGERED FOR TRANSGENIC PLANTS UNDER PERMIT (PHARMACEUTICALS)**

#### **BACKGROUND**

Some genetically engineered plants and plant viruses are being field tested to produce proteins that may have therapeutic use in human or animal therapy. This document outlines APHIS' evaluation of the risks of these products to threatened and endangered species.

The goal of this research is to produce cheaper and safer therapeutics. Mostly, applicants are **not** developing new therapeutics in plants but are trying to produce existing therapeutics (or close relatives) in plants. Because some of the therapeutics has already been approved by the Food and Drug Administration, a great deal is known about safety and risks of the therapeutic. Although the nature of the therapeutics is often claimed as confidential business information by the applicants, the United States Government has access to detailed information about each therapeutic.

#### **REGULATORY AUTHORITY**

Human therapeutics are regulated by the Food and Drug Administration (FDA), while veterinary biologics are regulated by the Center for Veterinary Biologics (CVB) of the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA). The plants that are engineered to produce the therapeutics, or infected with a virus engineered to produce the therapeutics, are regulated by Biotechnology Regulatory Services staff (BRS) of APHIS. If they produce a human biologic, they are also regulated in part by FDA as part of its oversight of production of the biologic. FDA is responsible for ensuring that the plant is grown and maintained in a manner that will enable consistent production of a safe, pure, and potent biologic. If plants are engineered to produce a veterinary biologic, the plants are likewise also regulated in part by APHIS CVB as part of its oversight of production of the veterinary biologic<sup>2</sup>.

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<sup>2</sup>Beginning in 1999, a working group was established by FDA and APHIS to coordinate efforts on this issue. The group sponsored a public meeting in April 2000, Transcripts of the Plant-Derived Biologics Seminar and Public Hearing on Plant-Derived Biologics (<http://www.fda.gov/cber/minutes/workshop-min.htm#plant>); prepares a side bar to case study three in the Office of Science and Technology Policy (OSTP) (<http://www.ostp.gov/html/012201.html>) and published in the Federal Register for public comment in September 2002, Draft Guidance for Industry: Drugs, Biologics, and Medical Devices Derived from Bioengineered Plants for Use in Humans and Animals - 9/6/2002. The group will continue its work indefinitely.

## **An Overview of field testing of pharmaceutical plants**

The first field test of pharmaceutical producing plant was in 1991. Currently, virtually all the field testing is being performed by commercial applicants. Corn, rice, and tobacco are the plants that have the largest acreage.

Researchers are interested in using crop plants to produce pharmaceuticals for a number of reasons. The need for very large quantities of biologics, projected to be 500 to 1000 kilograms per year for some human biologics, is growing rapidly. Production costs may be lower than with traditional fermentation technology, both because of reduced energy costs and reduced cost of raw materials. The energy-expensive process of cleaning and sterilization of large fermentors is not necessary and the need for large volumes of purified culture medium is eliminated. In addition, the use of crop plants removes the potential for contamination of the biologic with animal viruses that potentially can be pathogenic to humans. An inherent risk with biologics produced in animals or animal cells are that the animals or animal cells will become infected with a pathogenic virus that may then contaminate the product. This risk is avoided by producing the biologic in plants, because there are no known plant viruses that can infect people. Because the human pharmaceuticals are costly, producers will take every effort to maximize yields. This will include frequent pesticide applications to ensure maximized plant yields.

The production systems for pharmaceuticals can be divided into two classes - those products that are produced in the seed and those produced in leaves.

For tobacco, the products are being produced in the leaves. To maximize leaf production, tobacco plants are usually “topped” to block flowering. In the absence of flowering, APHIS can identify no non-target organism that “feeds” on tobacco that is not a plant pest except possibly skunks. Because of nicotine production, earthworms are killed even by the non-engineered tobacco plants. If flowering does occur, bees and other pollinators could be potentially exposed.

There are two systems used in tobacco. The first uses engineered plants. The pharmaceuticals are being produced under wound-inducible promoters. That means that the engineered plants do not produce detectable amounts of the product until the leaves are wounded<sup>3</sup>.

The other uses a tobacco mosaic virus which produces products by two systems. The virus is engineered to produce an epitope (the part of the sequence of an antigen that produces an immunological response). The non-engineered plants are inoculated with the virus and a few weeks later the leaves are harvested and the virus is extracted and purified. The cut plants are allowed to regenerate and another harvest is performed. The plants are in the field for approximately 2 months.

The other TMV system cause production of the product in the intracellular spaces of the leaves. The leaves are harvested and the product is gently extracted.

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<sup>3</sup> When insects devour leaves, plants respond by producing a variety of compounds to deter feeding. Using molecular techniques, scientists have identified the DNA sequences (promoters) that trigger the production of compounds by wounding.

For most of the food crops including corn, rice, and barley, the pharmaceutical is being produced in the seed. Production in the seeds offers several advantages: one relatively high level of proteins can be produced, the proteins are generally more stable at room temperature in seeds than as purified products, and the systems to purify proteins from seeds is well developed.

### **How field tests are performed under APHIS permit.**

The goal of APHIS regulations is to establish measures that must be taken to minimize dissemination of the engineered organism into the environment during movement and while in the receiving facility (laboratory, growth chamber, or greenhouse) as specified in 7 CFR 340. A consequence of minimizing dissemination and persistence in the environment is exposure of any non-target organism is also minimized.

Permits are required for importation, interstate movement, and field-testing plants engineered to produce pharmaceutical compounds and microorganisms. In the permit the applicant lists the regulated article or product, donor organism, recipient organism, vector or vector agent, dates of the importation, movement or release, quantity of the regulated article and the port of importation or site of release. In addition detailed information is provided as appropriate on the anticipated or actual expression of the altered genetic material in the regulated article and it differs from a non-modified parent organism, the molecular biology of the system, the country or locality where the donor, recipient, and vector were collected and produced, the experimental design at the release site, the facilities at the destination, the measures to insure confinement, and the final disposition. This data is required so that a decision can be made to conclude that the transgenic plant is adequately characterized, that no transgenic plant material will persist in the environment, and that any unintentional or unanticipated effects, if any, can be restricted to the confined field site and be managed in such a way that there are no potential plant pest risks after the confined field release is terminated. All field test approvals require that a field data report be filed after the experiment is complete.

For field tests, measures must be taken to confine the transgenic plants to the field site during the defined period of the release and to prevent the transgenic plants or their progeny from persisting in the environment in subsequent growing seasons either within or outside of the site of the confined release. Both the reproductive isolation measures and post harvest land use restrictions are based on the reproductive biology and seed dormancy characteristics of the species, surrounding land use, proximity of sexually compatible plants and presence of pollinators. Additional mitigation measures may be necessary based on the nature of the introduced trait(s).

During the growing season, measures must be taken to achieve reproductive isolation from plants of the same species and other sexually compatible species that are not part of the confined release, whether they are cultivated, weedy or wild species<sup>4</sup>. Depending on the plant species,

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<sup>4</sup> APHIS has commented ([http://www.aphis.usda.gov/ppq/biotech/pdf/pharma\\_2000.pdf](http://www.aphis.usda.gov/ppq/biotech/pdf/pharma_2000.pdf)) on plant species appropriate for field testing. “APHIS believes that some plants are inappropriate for the production of pharmaceuticals. These plants have characteristics like multiple year seed dormancy (e.g. *Brassica rapa*, are bee pollinated, and a sexually compatible with weed species in the locality of the field test.”

this can be achieved by the use of one or a combination of the following: isolation distance, pollen or pollination-proof caging, netting or bagging of plants prior to flowering, guard rows/ border rows of plants to attract pollinators or trap transgenic pollen, flower removal prior to pollination, use of male sterile lines, use of plant growth regulators to block reproductive development, different flowering time, and/or termination of the confined field release prior to flowering. Generally, isolation distances that are used to ensure purity of certified seed (such as breeder seed or foundation classes of certified seed) may be adapted successfully to prevent or minimize out crossing of transgenic pollen to sexually compatible plants that could produce viable progeny capable of persisting outside the confined field release site. When isolation distances are used, these zones are also monitored for the presence of the same species, related species and for proximity of fields of the same species.

Post-harvest land use restrictions may be necessary for a certain number of years following harvest of the transgenic plant material to allow monitoring, removal and destruction of volunteers. Generally, for corn, this would involve monitoring for volunteers either immediately after harvest in warm climates where conditions favorable for germination can be maintained, or in the next growing season in colder climates. Generally, the post-harvest periods used to ensure purity of certified seed may be adapted successfully. For certain plant species, and for certain specific cases, post-harvest land use restrictions may also be necessary for the perimeter of the confined field site itself to monitor for volunteers resulting from potential dissemination of seed, e.g., during mechanical harvesting operations.

Other risk mitigation activities for field tests include: (1) adequate identification, packaging and segregation measures to prevent seed mixing, spillage and dispersal into the environment during transit; (2) adequate cleaning of seeding and transplanting machinery at the confined field site prior to removal to another location to prevent dissemination of viable transgenic plant material into the environment; (3) devitalization/destruction of surplus seed or seedlings, and any viable transgenic plant material remaining after transplantation or after harvesting at the confined field site by suitable means which could include, but are not limited to, dry heat, steam heat, crushing, deep burial, disking into the soil, burning, treatment with appropriately labeled herbicides and/or chemicals (harvested transgenic seed and/or plant material from the confined field site may only be retained in an approved facility if requested at the time of the submission and authorized by the regulatory authority, and should be clearly identified, securely transported, and stored separately from other seed/or plant material to avoid mixing); (4) a contingency plan for destruction of viable transgenic plant material in case of accidental release. The plan should include site marking and monitoring to ensure destruction of viable material and immediate notification of regulatory authorities.

#### **What information applicant provides APHIS for field testing:**

This is not a complete list of all information provided but focuses on elements associated with risks to non-target organisms.

1. Levels of a gene product in roots, stem, leaves, pollen and seeds.

If the desired product is an enzyme, provide quantitative enzyme activity data for the roots, stem, leaves, pollen and seeds of the recipient organism, and for comparison the amount in the



organism where the gene was obtained. (The amount of gene products in food or feed may also be supplied).

APHIS will use this information to determine if the non-target organism is likely to have been exposed to the protein previously and whether the amounts of protein are in the range expected for consumption.

2. Whether the gene product is sensitive to gastric digestive conditions (pH and proteolytic enzymes).

If the product is sensitive to gastric digestion (e.g. many of the new proteins in GMOs are degraded within a minute) then exposure is virtually nil. Being susceptible to protease degradation also is important in disappearance of the protein in plant debris.

3. The thermal stability of the gene product.

The less thermal stable the product the more easily it will be degraded in the environment.

4. Provide APHIS data submitted to the FDA or other regulatory agencies that have been developed as part of a clinical trial.

FDA and CVB reviews for new therapeutics always contain safety data generated in lab animals and occasionally in humans. This data would help address potential impacts on non-targets.

5. Whether there is sequence homology to known toxicants, allergens, or proteins known or likely to harm non-target organisms (pesticidal properties).

The number and functions of proteins being identified have and will continue to increase rapidly. Database searches can quickly determine if a given protein has any sequence homology to known proteins that raise concerns for non-target organisms. This is an easy screen for all new proteins being field tested under APHIS authorization.

6. If the gene product has some inherent toxic activity, compare levels produced in the transgenic plant with those in the organism of origin (or related organisms). Address possible differences associated with different exposure routes

7. Provide a list of threatened and endangered species for each county that a field test is planned.

## **ANALYSIS**

Considering all the above provided information and literature, APHIS will assess the plants/seeds have damaging or toxic effects directly or indirectly on non-target organisms associated with the plant or its parts, including:

- a. beneficial organisms (insect pollinators, earthworms, bees, lady beetles, etc.)
- b. foraging birds, rabbits, deer, rodents or other wildlife
- c. potential impact on threatened and endangered species (TES)

If APHIS cannot reach a “no harm” decision then it will initiate consultation. To document our decision making process APHIS will complete a TES assessment sheet for every gene-site combination.

**Appendix IV. Applicant supplied TES Worksheet for Missouri**

**Ventria Bioscience  
TES WORKSHEET**

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**Ventria Bioscience  
TES WORKSHEET  
For Lactoferrin Rice  
Trials and Production  
Cape Girardeau, Mississippi and Scott Counties, Missouri**

**RECIPIENT ORGANISM:** Rice, *Oryza sativa*

**PRODUCTS:**

Recombinant human lactoferrin expressed in the endosperm of rice grains is the product. Human lactoferrin, ubiquitous in healthy humans, provides a broad range of protective functions. It helps the body to modulate inflammatory and immune responses, in particular for infants. Recently, DMV International a major manufacturer of bovine lactoferrin, has received GRAS ('Generally Recognized As Safe') status for bovine lactoferrin.

**LOCATION OF FIELD TEST:**

The trial and scale-up locations are planned for Cape Girardeau, Mississippi and Scott Counties in the southeast corner of Missouri, adjacent to the Mississippi River. These counties are primarily agricultural and planted to cotton, corn, sorghum, soy and wheat. Although rice is grown in this regional area of Missouri, less than 500 acres per year has been grown in Mississippi or Scott County and none in Cape Girardeau County. No rice driers, mills or rice seed processing facilities are present in these counties. Ventria is working with the sole rice producer in Scott County.

In all cases, a rice-free 50 foot fallow area, which may include roads, borders the transgenic rice. In addition, Ventria performance standards call for a ¼ mile distance to any commercial rice production.

The nearest non-agricultural water is more than one mile from the field site.

The land to be used is currently in agricultural production. No practices are performed which would affect TES any more severely than any other local agricultural practice or commercial rice field. Routine, appropriate, and registered for Missouri agricultural practices will be performed. Ventria-dedicated equipment will be used under USDA-approved SOP's for equipment and cleanout practices. In addition, our rice area is within a much larger agricultural zone.

**LEVELS PRODUCED AND TISSUE:**

The product is expressed only in the endosperm of rice seed and in no other plant part. Five mg of lactoferrin protein per gram of dried brown rice flour is the expression level (5mg/g). Levels detected in the field may be lower due to environmental interactions.

Ventria uses a targeted system for production of its recombinant molecules in which the molecules are manufactured exclusively in the grain of the plant. All other plant tissues: roots, stems, leaves, and pollen do not contain our target molecules. Biochemically, these tissues are identical to their counterparts from non-transgenic plants, as shown by proximate analysis of these tissues to non-transgenic controls. We have performed western blots on tissues from our plants to verify the controlled expression of target molecules in our expression system (Figure 1).

For the blot shown below, protein extracts were prepared by grinding the tissues under liquid nitrogen into fine powders, then adding extraction buffer (PBS + 0.35 M NaCl). The extracts were clarified by centrifugation, and the protein concentrations of the supernatant liquids were estimated using the Bio-Rad assay. Forty µg of protein was loaded into each sample well. Each lane was prepared in the same way (i.e. diluted in 1x sample buffer and boiled for 10 min prior to loading).

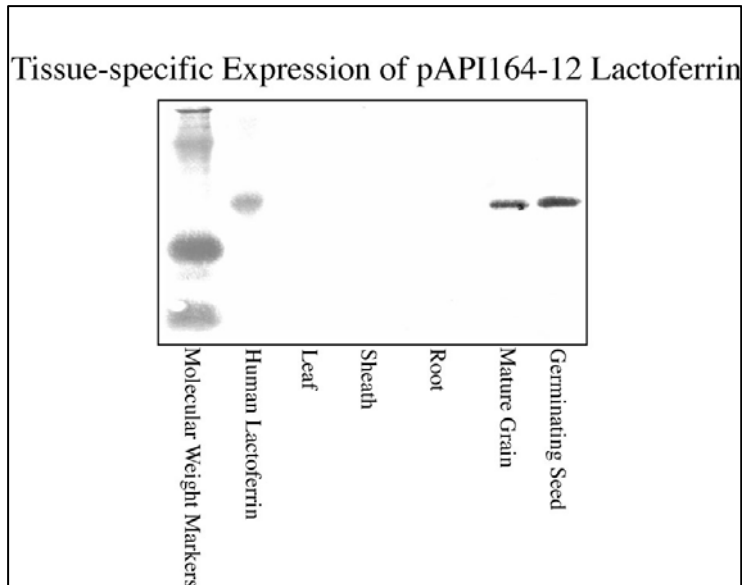


Figure 1, above. Ventria's Lactoferrin is expressed strictly in the rice endosperm. Plant tissue, other than the seed, does not contain the protein.

#### ASSESSMENT:

Various forms of lactoferrin are found and characterized in numerous mammals including humans, cow, buffalo, camel, goat, horse, mouse and pig. We are unaware of lactoferrin having any toxic effects on birds, reptiles, insects or mammals. Rather lactoferrin has shown efficacy at combating infections in experimental animals and humans following administration by oral, intravenous, intraperitoneal and topical routes. For example, intraperitoneal administration decreases the pathology resulting from a *Klebsiella pneumonia* infection in mice (Ivanovska, Georgieva et al. 1996). Lactoferrin has been shown *in vitro* to have antiviral properties (Grover, Giouzeppos et al. 1997). Intra-articular injection of lactoferrin reduces inflammation brought about in arthritis animal models (Trif, Guillen et al. 2001). Lactoferrin is also effective as a source of dietary iron

for infants. It has been found intact in the stool of infants, and the quantities are sufficient enough to carry out necessary iron absorption roles (Lønnerdal and Iyer 1995).

Lactoferrin is an iron binding protein; and consequently Ventria's lactoferrin rice lines contain higher amounts of iron than non-transgenic rice. In fact, the iron content of transgenic rice grains was more than twice that of non-transformed grains while there were no significant differences in other minerals (Table 1). We have considered the probability that there may be some toxicity issues associated with iron overdose in non-target organisms, and feel that this is a very unlikely possibility. The National Academy of Science has identified 4500 ppm of iron as a tolerable dietary exposure level in poultry. This information can be found at:

<http://books.nap.edu/books/0309048923/html/58.html>

Assuming that this level also holds in other birds, then 450 mg / 100 g of feed is a tolerable level of iron in a bird diet. As shown in Table 1, the level of iron in Ventria rice is well below this level. In addition, it is unlikely that all of the iron in the rice will be available for adsorption, since a portion of it will be bound to lactoferrin. Further, it is unlikely that all of the lactoferrin will be "released" from the intact grain upon consumption.

Table 1: Paddy rice (hull+brown rice) Field samples, 2003: Proximate analysis using field-grown samples of transgenic lactoferrin 164-12 and non-transgenic rice grains.

Analysis mg/100gm	LF164-12 Average	Taipei 309 (Non-Transgenic Parent)	Standard Value Range
<u>Minerals</u>			
Calcium	46.31	21.44	15-70
Phosphorus	29.26	21.58	26-36
Iron	4.21	3.60	2.8-5.7
<u>Vitamins</u>			
Niacin	6.39	4.55	1.5-6.5
B1	0.54	0.44	0.14-0.38
B2	0.34	0.21	0.04-0.13

Humphrey et al. have analyzed the effects of ingestion of Ventria's lactoferrin on the health and intestinal flora of chicks. (Humphrey, Huang et al. 2002). In their study, they measured growth rate and intestinal structure of Cobb broiler chicks fed varying amounts of lactoferrin rice for 21 days after hatching. As predicted, the results show that lactoferrin improved the health of the chicks. Growth rates of the chicks were improved relative to controls. Also histological indices of intestinal health showed improvement

relative to controls. These data support the hypothesis that the lactoferrin reduced the pathogen load in the intestines of the chicks.

There are no known beneficial invertebrates in rice agriculture, and only a handful of insects that inhabit a rice habitat. Since Ventria's expression system involves only expression of the target protein in grains, only insects that consume grain would be exposed to the target molecules. Any such insect is considered a pest.

There are several rice-field coincidental pests that are known to feed on rice grains in Missouri, as opposed to other plants parts. Rice Stink Bugs feed on the developing rice grain from the milk stage through grain maturity; grasshoppers may feed on the very young immature head of the rice plant; crayfish, if present, often feed on young, germinating rice grains. None of these insects are classified as a beneficial: they are considered pests, and are eradicated using normal agricultural practices. Any invertebrates (beneficial or not) that consume other parts of a rice plant will be unaffected by the transgenic nature of our plants, since the expression of our target proteins is limited exclusively to the grain.

We conducted an analysis of which Missouri threatened and endangered species (TES) are present in Scott, Cape Girardeau and Mississippi Counties and would be most likely to consume Ventria's mature grain or germinating seedlings, if present. We did this by examining the known most recent location and diet of each of the animals listed in the Federal TES list. There were some animals that were clearly identifiable as non-seed or seedling eaters, such as bats, eagles, and mollusks. Two species listed for these counties, the pallid sturgeon and Fat Pocketbook (mollusk), are known to potentially inhabit the Mississippi River which borders the eastern edge of Cape Girardeau and Mississippi Counties, not agricultural areas. The Interior Least Tern, listed as a TES by the US Fish and Wildlife Service for the counties of interest, feeds almost entirely on small fish and utilizes islands and beaches of the Mississippi River.

The one plant species on the Federal TES list found in Ventria's proposed counties, is the Decurrent False Aster. Ventria's field data to date shows no movement or leaching of lactoferrin into the soil and we believe there are no exposure routes which could negatively affect plant species of any kind. To date we have seen no depression of weed species in our fields relative to commercial fields.

We have reviewed the current literature, including the data in sections above, with Dr. Kirk Klasing, a professor in the animal science department at the University of California, Davis; and discussed with him the potential for lactoferrin contained within rice grains, to have deleterious effects on non-target organisms inadvertently exposed to them either topically or through digestion. Based on the current literature, and the data generated to date by Ventria, we do not believe there is any reason to think that these molecules will harm non-target organisms in the environment.

Finally, all seed is harvested and stored in Ventria's dedicated storage. The remaining straw is burned as soon as possible and the field disked. No appreciable transgenic rice or

lactoferrin remains in the field for consumption by wildlife. In-season and post-harvest management practices are also designed to deter wildlife from moving into our fields.

**CONCLUSION:**

There are no Threatened or Endangered Species which are expected to inhabit Ventria's rice fields, none which eat rice, and no expose routes from our fields to likely TES habitats, such as the Mississippi River.

**MISSOURI TES LINKS**

Endangered and Threatened State and Federal TES:

<http://www.conservation.state.mo.us/nathis/endangered/checklst/endspec.htm>

Accessed October, 2004;

Endangered Species Guidesheets:

<http://www.conservation.state.mo.us/nathis/endangered/endanger/guide.htm>

Accessed October, 2004

FEDERAL SUMMARY LINKS:

<http://ecos.fws.gov/ecos/apps.doc>

Accessed October, 2004;

U.S. Fish and Wildlife Service, Region 3:

<http://midwest.fws.gov/endangered/lists/missouri-cty.html>

Accessed October, 2004;

Table 1. Federal Threatened and Endangered Species in Missouri, follows.



Table 1. Federal Threatened and Endangered Species in Missouri.

Animals -- 17

<u>Status</u>	<u>Listing</u>	<u>Category</u>	<u>Eat Rice?</u>	<u>Cape Girarde au County Y/N?</u>	<u>Mississippi County Y/N?</u>	<u>Scott County</u>	<u>Location Notes</u>
E	<u>Bat, gray ( Myotis grisescens)</u>	Mammal	N	No	No	No	Taney , Boone, Dent , Hickory, Renyolds and Wright
E							Indiana bats hibernate in only eight specific locations, three of which are located in Shannon, Washington, and Iron counties of Missouri. Summer roosting
E	<u>Bat, Indiana ( Myotis sodalis)</u>	Mammal	N	No	Listed by US.FWS for this County	No	Indiana bats have been recorded in northern Missouri McDonald, Barry, Stone, Christian, Torey, Ozark, Douglas, Howell
T	<u>Bat, Ozark big-eared ( Corynorhinus (=Plecotus) townsendii ingens)</u>	Mammal	N	No	No	No	Thirteen Ozark cavefish sites are known to exist in Missouri. Presently, populations are known from Newton, Jasper, Lawrence, Greene, Stone, and Barry counties.
	<u>Cavefish, Ozark ( Amblyopsis rosae)</u>	Fish	N	No	No	No	

T							Niangua darters occur only in Missouri and are located in counties in the Osage River basin including: Osage, Maries, Miller, Camden, Hickory, Dallas, Benton, Greene, Webster, Cedar, Polk, and St. Clair counties.
T	<u>Darter, Niangua ( Etheostoma nianguae)</u>	Fish	N	No Listed by US.FWS for this County	No	Listed by US.FWS for this County	
E	<u>Eagle, bald (lower 48 States) ( Haliaeetus leucocephalus)</u>	Bird	N			Listed by US.FWS for this County	Pike, Lincoln, St. Charles, Henry Pulaski and Stoddard are most recent sightings
T	<u>Higgins eye (pearlymussel) ( Lampsilis higginsii)</u>	Mollusks	N			No	This species is peripheral to Missouri; the entire distribution of the Neosho madtom is 250-300 stream miles of the Arkansas River basin, In Missouri, the pink mucket lives primarily in the Meramec, Gasconade, and Black rivers, and stretches of the Osage River. Pink mucket shells, but not live pink muckets have been found in the Sac, Big, St. Francis, and Little Black rivers.
E	<u>Madtom, Neosho ( Noturus placidus)</u>	Fish	N	No	No	No	
E	<u>Mucket, pink (pearlymussel) ( Lampsilis abrupta)</u>	Mollusks	N	No	No	No	
	<u>Mussel, scaleshell ( Leptodea leptodon)</u>	Mollusks	N			No	

E	<u>Pearlymussel, Curtis ( Epioblasma florentina curtisii)</u>	Mollusks	N	No	No	No	
T	<u>Plover, piping (except Great Lakes watershed) ( Charadrius melodus)</u>	Bird				No	
E					Listed by US.FWS for this County / Adjacent Mississippi River areas		
E	<u>Pocketbook, fat ( Potamilus capax)</u>	Mollusks	N	No		No	
E	<u>Shiner, Topeka ( Notropis topeka (=tristis))</u>	Fish	N	No	No	No	Topeka shiner inhabits streams in Boone, Cooper, and Moniteau counties.
E				Listed by US.FWS for this County / Adjacent Mississippi River Area	Listed by US.FWS for this County / Adjacent Mississippi River Area		
E	<u>Sturgeon, pallid ( Scaphirhynchus albus)</u>	Fish	N	Listed by US.FWS for this County /	Listed by US.FWS for this County /	No	
E	<u>Tern, least (interior pop.) ( Sterna antillarum)</u>	Bird		Listed by US.FWS for this County /	Listed by US.FWS for this County /	No	Mississippi and Missouri River, islands, beaches and sandbars

				Adjacent Mississippi River Area	River Area		
T	<u>Wolf, gray Eastern Distinct Population Segment ( Canis lupus)</u>	Mammal	N			No	
Plants -- 8						No	
<u>Status</u>	<i>Listing</i>					No	
T							
T	<u>Milkweed, Mead's ( Asclepias meadii)</u>	Flora	-	No	No	No	It is presently found in the Osage Plains region and the St. Francois mountains region of the Ozarks.
T	<u>Aster, decurrent false ( Boltonia decurrens)</u>	Flora	-	Formerly, not currently	Listed by US.FWS for this County	No	Former distribution of this plant included Lincoln, St. Charles, St. Louis, and Cape Girardeau counties. Presently it is only known to occur in St. Charles County.
T	<u>Geocarpon minimum (No common name)</u>	Flora	-	No	No	No	Geocarpon populations in Missouri are restricted to Dade, Polk, Greene, Cedar, Jasper, Lawrence, and St. Clair Counties in the Ozark and Osage Plains Natural Divisions

T	<u>Sneezeweed, Virginia ( <i>Helenium virginicum</i> )</u>	Flora	-			No	
T	<u>Bladderpod, Missouri ( <i>Lesquerella filiformis</i> )</u>	Flora	-	No	No	No	Missouri bladderpod is presently found in the following Missouri counties: Dade, Greene, Christian, and Lawrence.
E	<u>Pondberry ( <i>Lindera melissifolia</i> )</u>	Flora	-	No	No	No	In Missouri, pondberry is found only in Ripley County of the Missouri Lowlands Region.
T	<u>Orchid, western prairie fringed ( <i>Platanthera praeclara</i> )</u>	Flora	-	No	No	No	Presently, this orchid has only been recorded from Atchinson, Holt, and Harrison counties. May be extirpated. One natural site for running buffalo clover was discovered in Madison county in 1994 and another was discovered in Maries county in 1998.
E	<u>Clover, running buffalo ( <i>Trifolium stoloniferum</i> )</u>	Flora	-	No	No	No	

## REFERENCES

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## **Appendix V. Assessment for new location in North Carolina**

### **I. Summary**

Ventria Bioscience, Sacramento, California, has submitted a permit application (APHIS 05-117-01r) to grow approximately 35 acres of genetically engineered rice (*Oryza sativa* L.) plants in Washington County, North Carolina on a farm near Plymouth. These transgenic plants have been engineered to express the human (*Homo sapiens*) glycoprotein lactoferrin in their seeds. These plants have also been engineered with the selectable marker gene *hpt* which encodes for the enzyme hygromycin B phosphotransferase, Hpt. Hpt inactivates the antibiotic hygromycin. This gene is not expressed in the mature plant due to the nature of the promoter that drives this gene. The transgenic line to be planted for the production of lactoferrin has been designated by the company as LF164-12.

### **II. Purpose and Need**

The purpose of this proposed introduction is the same as that in Missouri, which is to produce grain to be milled into flour from which lactoferrin will be extracted. This supplement to the existing EA was prepared because the scope of the proposal has expanded to include a planting in North Carolina.

### **III. Alternatives to the Proposed Action.**

The three alternatives outlined in section III above remain the same for North Carolina.

### **IV. Discussion of the Alternatives**

No new issues arise in North Carolina as they relate to the Alternatives

### **V. Description of the Regulated Article – Rice Biology**

The biology of the engineered rice is identical to that outlined in Section V above. The systematics of rice, genetic improvement, weediness, and mode of gene escape are applicable for North Carolina, as they are for Missouri.

### **VI. Description of the Regulated Article – Rice Biology**

The vectors, selectable marker gene, gene of interest and characterization of the engineered plant are identical to that proposed for Missouri.

### **VII. Description of the Field Test/Affected Environment**

The only change in the permit for North Carolina is the location of the field planting. Following is a summary of the proposed location and plot design.

The proposed field site is on private land in Washington County, North Carolina. The area has not had a history of rice farming. Cotton, soybean and corn have been grown in the area for many years.

Field plots will be separated by a distance of at least  $\frac{1}{4}$  mile from other rice fields in order to maintain confinement. Ventria will monitor for any nearby rice testing or production and scout for red rice within this  $\frac{1}{4}$  mile distance. In actual practice the field site will be located at least a mile away from a small research rice plot on an experiment station, but Ventria will be required to monitor for rice within the  $\frac{1}{4}$  mile confinement area. Ventria's plots will be surrounded by a fallow zone of 50 feet. The fallow zone may be planted with a low-growing crop that will not be used for food or feed to prevent erosion. The rice will be grown in flooded fields and in contiguous paddies

There is no commercial rice grown in North Carolina. There will be a small variety trial located on a nearby field research station, approximately one mile away. This is a yield production trail. The rice from the yield trial will not be used for food or feed and will not be used in any future breeding studies.

Because the area has had no rice grown in recent times, there is no weedy rice complex indigenous to the area. Rice was once grown commercially in the Carolinas, and escaped from cultivation. However, it occurs only in marshy areas and is very rare. According to Radford et al. (1968) escaped *Oryza sativa* has been found primarily in Beaufort County, South Carolina and other parts of Virginia, Florida and Mississippi and according to Weakley (2005) is probably not truly naturalized.. Since this location has been farmed for many years with other crops, there has been no opportunity for a weedy rice complex to develop. Therefore there is no weedy rice present with which the regulated plants could cross.

Agricultural practices, as outlined in Section VII above will be identical to those proposed for Missouri. All the other conditions, field observation and monitoring, and termination of the field test also remain the same.

The test site is required to provide adequate physical security. The contract farmer is the owner of the field test site. All the surrounding fields outside the food/feed crop fallow zone will be planted to cotton, soybean, corn, white potatoes, or clary sage. Experimental small grains (wheat, barley, triticale) and sometimes grain sorghum are grown at the nearby experiment station. The site is not prone to flooding. The closest body of water to the proposed location is Mackeys Creek which is approximately four miles away. Albemarle Sound is approximately six miles from the farm.

North Carolina is in a location where hurricanes can occur. The proposed planting location is in the eastern part of the State, which can be affected by hurricanes arising in the Atlantic Ocean. This particular area could be subjected to hurricane-force winds or could be potentially flooded by a tidal surge from a class 5 hurricane. However, if such an event were to occur, the release of the regulated article would be unlikely due to the following factors: If there is grain on the plant, or enough of a flag leaf and immature panicle to give some weight to the top of the plant, the wind will knock over and lodge



the plant. The grain is effectively driven to the ground, into the standing mud and water, where it usually rots under the vegetative material of the rice plant. This is a significant problem where high winds occur prior to harvest in rice growing regions like Louisiana. Therefore it is highly unlikely that the grain will be blown off the plant or plants uprooted in high winds. If the area were subject to a tidal surge during a class 5 hurricane, salt water would intrude on the area and essentially kill the rice. Even if the grain were to somehow be blown from the site in high winds and remain viable, there are no agricultural environments where the plants could establish and survive because no rice is grown within 800 miles.

### **VIII. Potential Environmental Impacts**

The potential environmental impacts essentially remain the same. However, since North Carolina has had no commercial rice growing in decades, there is a low likelihood that weedy red rice will be a problem now and in the future. Therefore there is very little chance that there will be any related species close to the farm to which gene flow could occur and lead to a loss of confinement.

Also, since there are no commercial rice growing operations in North Carolina, there is even less opportunity for birds or other animals to transfer viable seed to commercial rice-growing operations. Commercial rice-growing operations are at least 800 miles away.

Ventria has submitted Standard Operating Procedures (SOPs) as a part of the permit submission and these have been reviewed by APHIS. In addition to having stringent SOPs, all the harvested seeds will be stored in dedicated storage bins on site and seeds will be processed on site. During the processing, the seed will be dehusked and milled on site using dedicated equipment in a dedicated staging area at the field site. Only Ventria personnel or employees assigned and trained by Ventria will be allowed to handle any seeds. Employing these methods along with following their SOPs will minimize the likelihood of human error of moving seed into other agricultural fields or into the food supply chain.

Effects of the field test on Threatened and Endangered Species:

Since this is a new location outside of the area for which a Threatened and Endangered Species assessment was conducted in the previous EA, the applicants provided an additional TES worksheet for North Carolina, which is included as Appendix VI. Accordingly, a new assessment was conducted for Washington County, North Carolina.

The proposed field test is a controlled release of the regulated article into the environment in Washington County, North Carolina. Neither the engineered rice plants nor the lactoferrin and *hpt* genes will affect any non-target organism including any threatened and endangered species (TES) listed in Washington County, North Carolina. An analysis of TES distribution in this County using the U.S. Fish and Wildlife databases (<http://ecos.fws.gov/ecos/index.do>) and (<http://nc-es.fws.gov/es/countyfr.html>) indicates there are only two animals: Bald Eagle - *Haliaeetus leucocephalus* and Red Wolf - *Canis*

*rufus* that live or once lived in Washington County, NC that are threatened or endangered. Neither inhabits rice fields nor consumes rice. Lactoferrin is not known to be toxic to birds or mammals (see above) that might consume the rice and serve as prey for the endangered species. Based on this assessment APHIS concludes a “no harm” decision can be reached for this proposed field test for Threatened and Endangered Species.

#### **IX. Standard and Supplemental Permit Conditions**

The standard and supplemental permit conditions are the same for North Carolina that were imposed on the Missouri location. These conditions are outlined in Appendix I and II respectively.

#### **X. Reference**

**Radford AE, Ahles HE, Bell CR** (1968) Manual of the Vascular Flora of the Carolinas. The University of North Carolina Press, Chapel Hill

**Weakley, A.S.** (2005) Flora of the Carolinas, Virginia, and Georgia. Working draft March 4, 2005, available at: [www.herbarium.unc.edu](http://www.herbarium.unc.edu).

**Appendix VI. Applicant supplied TES Worksheet for North Carolina**

**Ventria Bioscience  
TES WORKSHEET**

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**Ventria Bioscience  
TES WORKSHEET  
For Lactoferrin Rice  
Trials and Production  
Washington County, North Carolina**

**RECIPIENT ORGANISM:** Rice, *Oryza sativa*

**PRODUCTS:**

Recombinant human lactoferrin expressed in the endosperm of rice grains is the product. Human lactoferrin, ubiquitous in healthy humans, provides a broad range of protective functions. It helps the body to modulate inflammatory and immune responses, in particular for infants. Recently, DMV International a major manufacturer of bovine lactoferrin, has received GRAS ('Generally Recognized As Safe') status for bovine lactoferrin.

**LOCATION OF FIELD TEST:**

The Lactoferrin production field, of approximately 35 acres, is planned for the northwest corner of Washington County, North Carolina, just south of the town of Plymouth, NC. The county economic base is primarily lumber, agricultural (corn and soybeans), mixed light industrial, and tourism. No commercial rice is grown in this county, or anywhere in North Carolina. No rice driers, mills or rice seed processing facilities are present the state.

The site is to be located on property adjacent to an Agricultural and Extension Research Station of the North Carolina State University, where Ventria's approved Nursery, with the same crop is to be planted. The specific plot of land was most recently planted to herbicide tolerant cotton (i.e.: no red-rice). In all cases, a rice-free 50 foot fallow area, which may include roads and levees, borders the transgenic rice. In addition, Ventria performance standards call for a ¼ mile distance to any commercial rice production, which is not a problem at this location.

The nearest non-agricultural water (fresh water creek) is approximately four miles from the field site.

The land area to be used for the nursery and the larger agricultural surrounding area is in terrestrial crops (as opposed to aquatic crops). Thus we expect few, if any aquatic species in this location. No practices are performed which would affect TES any more severely than any other local agricultural practice or commercial fields. Routine, appropriate, and legal agricultural practices for this site and crop will be performed. Only Ventria-dedicated equipment will be used under USDA-approved SOP's for equipment and cleanout practices.

## LEVELS PRODUCED AND TISSUE:

The product is expressed only in the endosperm of rice seed and in no other plant part. Five mg of lactoferrin protein per gram of dried brown rice flour is the expression level (5mg/g). Levels detected in the field may be lower due to environmental interactions.

Ventria uses a targeted system for production of its recombinant molecules in which the molecules are manufactured exclusively in the grain of the plant. All other plant tissues: roots, stems, leaves, and pollen do not contain our target molecules. Biochemically, these tissues are identical to their counterparts from non-transgenic plants, as shown by proximate analysis of these tissues to non-transgenic controls. We have performed western blots on tissues from our plants to verify the controlled expression of target molecules in our expression system (Figure 1).

For the blot shown below, protein extracts were prepared by grinding the tissues under liquid nitrogen into fine powders, then adding extraction buffer (PBS + 0.35 M NaCl). The extracts were clarified by centrifugation, and the protein concentrations of the supernatant liquids were estimated using the Bio-Rad assay. Forty ug of protein was loaded into each sample well. Each lane was prepared in the same way (i.e. diluted in 1x sample buffer and boiled for 10 min prior to loading).

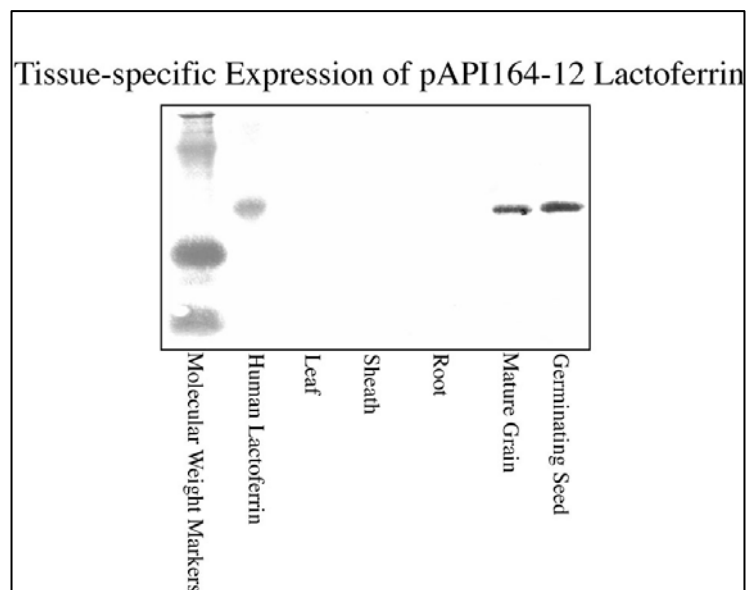


Figure 1, above. Ventria's Lactoferrin is expressed strictly in the rice endosperm. Plant tissue, other than the seed, does not contain the protein.

## ASSESSMENT:

Various forms of lactoferrin are found and characterized in numerous mammals including humans, cow, buffalo, camel, goat, horse, mouse and pig. We are unaware of lactoferrin having any toxic effects on birds, reptiles, insects or mammals. Rather lactoferrin has shown efficacy at combating infections in experimental animals and humans following administration by oral, intravenous, intraperitoneal and topical routes. For example, intraperitoneal administration decreases the pathology resulting from a *Klebsiella pneumonia* infection in mice (Ivanovska, Georgieva et al. 1996). Lactoferrin has been shown *in vitro* to have antiviral properties (Grover, Giouzeppos et al. 1997). Intra-articular injection of lactoferrin reduces inflammation brought about in arthritis animal models (Trif, Guillen et al. 2001). Lactoferrin is also effective as a source of dietary iron for infants. It has been found intact in the stool of infants, and the quantities are sufficient enough to carry out necessary iron absorption roles (Lönnerdal and Iyer 1995).

Lactoferrin is an iron binding protein; and consequently Ventria’s lactoferrin rice lines contain higher amounts of iron than non-transgenic rice. In fact, the iron content of transgenic rice grains was more than twice that of non-transformed grains while there were no significant differences in other minerals (Table 1). We have considered the probability that there may be some toxicity issues associated with iron overdose in non-target organisms, and feel that this is a very unlikely possibility. The National Academy of Science has identified 4500 ppm of iron as a tolerable dietary exposure level in poultry. This information can be found at:

<http://books.nap.edu/books/0309048923/html/58.html>

Assuming that this level also holds in other birds, then 450 mg / 100 g of feed is a tolerable level of iron in a bird diet. As shown in Table 1, the level of iron in Ventria rice is well below this level. In addition, it is unlikely that all of the iron in the rice will be available for adsorption, since a portion of it will be bound to lactoferrin. Further, it is unlikely that all of the lactoferrin will be “released” from the intact grain upon consumption.

Table 1: Paddy rice (hull+brown rice) field samples, 2003: Proximate analysis using field-grown samples of transgenic lactoferrin 164-12 and non-transgenic rice grains.

Analysis mg/100gm	LF164-12 Average	Taipei 309 (Non-Trangenic Parent))	Standard Value Range
<u>Minerals</u>			
Calcium	46.31	21.44	15-70
Phosphorus	29.26	21.58	26-36
Iron	4.21	3.60	2.8-5.7

<u>Vitamins</u>			
Niacin	6.39	4.55	1.5-6.5
B1	0.54	0.44	0.14-0.38
B2	0.34	0.21	0.04-0.13

Humphrey et al. have analyzed the effects of ingestion of Ventria’s lactoferrin on the health and intestinal flora of chicks. (Humphrey, Huang et al. 2002). In their study, they measured growth rate and intestinal structure of Cobb broiler chicks fed varying amounts of lactoferrin rice for 21 days after hatching. As predicted, the results show that lactoferrin improved the health of the chicks. Growth rates of the chicks were improved relative to controls. Also histological indices of intestinal health showed improvement relative to controls. These data support the hypothesis that the lactoferrin reduced the pathogen load in the intestines of the chicks.

There are no known beneficial invertebrates in rice agriculture, and only a handful of insects that inhabit a rice habitat. Since Ventria’s expression system involves only expression of the target protein in grains, only insects that consume grain would be exposed to the target molecules. Any such insect is considered a pest.

We conducted an analysis of which North Carolina threatened and endangered species (TES) are present in Washington County and would be most likely to consume Ventria’s mature grain or germinating seedlings, if present. We did this by searching both the North Carolina Ecological Services database, under the U.S. Fish and Wildlife Service and the Threatened and Endangered Species System (TESS), of the U.S. Fish and Wildlife Service’s Environmental Conservation Online System.

We compared these lists against the likely location and diet of each of the animals and found none which are likely to be present in the area we plan to plant, which is typical terrestrial agricultural land. There were some animals that were clearly identifiable as non-seed or seedling eaters, such as bats, eagles, whale, and mollusks, and could be easily dismissed. Others were specific to habitats not found in Washington County (e.g.: whales, marine).

Only four species were found to be of ‘concern’ by U.S. Fish and Wildlife Service in Washington County (Table 1) all were vertebrates and none consume rice.

All genetic elements and sources of Ventria’s constructs were checked against the amended list of biological agents or toxins in the Agricultural Bioterrorism Act of 2002 and the Center for Disease Control list of bioterrorism agents or diseases. None of genetic elements or sources used in any lines planned for the nursery is on either list.

A search against a database of known allergens, identified in the SWISS-PROT and TrEMBL databases, also using techniques described by Gendel, and the Food Allergy Research and Resource Program (FARRP) allergen database, [www.allergenonline.com](http://www.allergenonline.com) did not identify human lactoferrin as an allergen (Pearson and Lipman 1988).

In searching for sequence similarities, there is 70% homology with bovine lactoferrin. There is little clinical information indicating bovine lactoferrin is a milk allergen. The major allergens in cow's milk allergy are casein,  $\beta$ -lactoglobulin and  $\alpha$ -lactalbumin (Wal 1998; Wal 2001). In investigations where IgE antibodies to lactoferrin have been demonstrated in children with cow's milk allergy, antibodies to one of the major cow's milk allergens has been demonstrated as well. In one study, one milk-allergic infant out of 92 was reported as mono-sensitized to bovine lactoferrin (Wal 1998). We were able to obtain samples of sera from two patients reported as mono-sensitized to bovine lactoferrin. Neither serum reacted with recombinant human lactoferrin. Thus even the rare sensitization by bovine lactoferrin is not relevant to the use of recombinant human lactoferrin.

In searching [www.allergenonline.com](http://www.allergenonline.com) database for other sequence similarities, there was a 52% amino acid sequence homology between human lactoferrin and chicken egg ovotransferrin (conalbumin), which is a known allergen. Chicken egg ovotransferrin (conalbumin) was the only protein with an identity greater than 50% (52.6%). As there is no immunological cross-reactivity between chicken egg ovotransferrin and human lactoferrin or recombinant human lactoferrin, it is not a safety issue.

There are no known beneficial invertebrates in rice agriculture, and only a handful of insects that inhabit a rice habitat. Invertebrates attracted to Ventria's rice in North Carolina are not likely to be strictly associated with aquatic agriculture. In as much as corn and soy are grown in this area, armyworm, stinkbug and grasshoppers are likely pests. Armyworms feed on the leaves; stink bugs feed on the developing rice grain from the milk stage through grain maturity; grasshoppers may feed on the very young immature head of the rice plant. None of these invertebrates are classified as a beneficial: they are considered pests, and are eradicated using normal agricultural practices.

Since Ventria's expression system involves only expression of the target protein in grains, only insects that consume grain would be exposed to the target molecules. Any such insect is considered a pest. Any invertebrates (beneficial or not) that consume other parts of a rice plant will be unaffected by the transgenic nature of our plants, since the expression of our target proteins is limited exclusively to the grain.

Finally, all seed is harvested and stored in Ventria's dedicated storage. The remaining straw is burned as soon as possible and the field disked. No



appreciable amount of transgenic rice or recombinant proteins remain in the field for consumption by wildlife. In-season and post-harvest management practices are also designed to deter wildlife from moving into our fields.

**CONCLUSION:**

There are no Threatened or Endangered Species which are expected to inhabit Ventria’s rice nursery, none which eat rice grain, and no expose routes from our fields to likely TES habitats.

Endangered and Threatened State and Federal TES:

North Carolina TES LINKS, by county; county listing for Washington county:  
<http://nc-es.fws.gov/es/countyfr.html>  
Accessed March 2005.

FEDERAL summary page for North Carolina.:  
[http://ecos.fws.gov/tess\\_public/TESSWebpageUsaLists?state=NC](http://ecos.fws.gov/tess_public/TESSWebpageUsaLists?state=NC)  
Accessed March, 2005

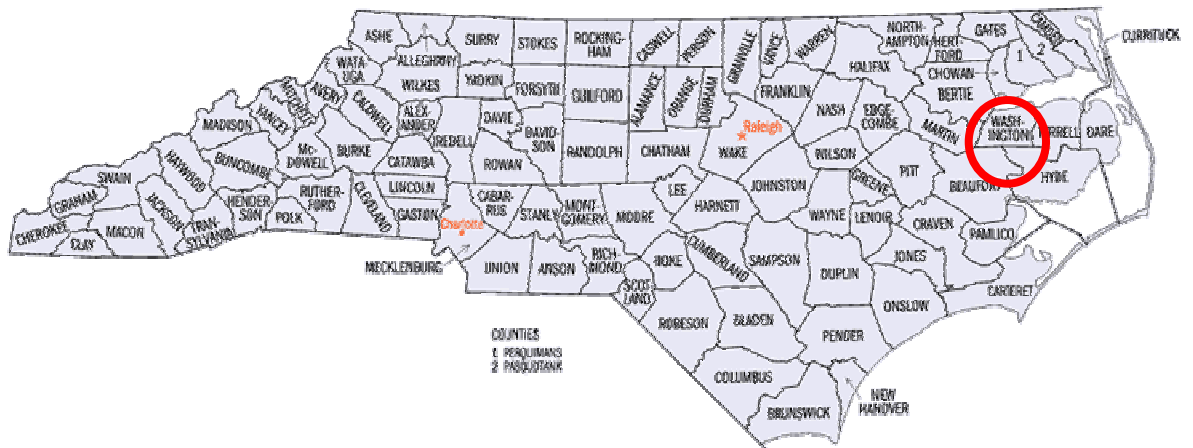


Figure 2. Counties, North Carolina. Washington County is in the north-eastern part of the state.

Table 2. Threatened and Endangered Species in Washington County, North Carolina, as listed by from: <http://nc-es.fws.gov/es/countyfr.html> . Last full update of statewide list: 3/7/2002; Washington County last updated 02/25/2003. In Washington county, the only species listed are vertebrate species; no invertebrates, vascular plants, etc. in Washington County are endangered.

Common Name	Scientific Name	Status
<b>Vertebrates</b>		
Bald eagle	<i>Haliaeetus leucocephalus</i>	Threatened (Proposed for delisting)
Rafinesque's big-eared bat	<i>Corynorhinus (=Plecotus) rafinesquii</i>	Federal Species of Concern (FSC)
Red wolf	<i>Canis rufus</i>	Experimental, nonessential endangered species EXP
Waccamaw killifish	<i>Fundulus waccamawensis</i>	Federal Species of Concern (FSC)

Table 3. Federal Threatened and Endangered Species list for North Carolina, from the Threatened and Endangered Species System of the U.S. Fish and Wildlife Service.

<b>North Carolina -- 63 listings</b>	
Animals – 36	
<u>Status</u>	<u>Listing</u>
T(S/A)	<u>Alligator, American ( Alligator mississippiensis)</u>
E	<u>Bat, Indiana ( Myotis sodalis)</u>
E	<u>Bat, Virginia big-eared ( Corynorhinus (=Plecotus) townsendii virginianus)</u>
E	<u>Butterfly, Saint Francis' satyr ( Neonympha mitchellii francisci)</u>
T	<u>Chub, spotfin Entire ( Cyprinella monacha)</u>
T	<u>Eagle, bald (lower 48 States) ( Haliaeetus leucocephalus)</u>
E	<u>Elktoe, Appalachian ( Alasmidonta raveneliana)</u>
E	<u>Heelsplitter, Carolina ( Lasmigona decorata)</u>
XN	<u>Mussel, oyster AL; Free-Flowing Reach of the Tennessee River below the Wilson Dam, Colbert and Lauderdale Counties, AL ( Epioblasma capsaeformis)</u>
E	<u>Pearlymussel, littlewing ( Pegias fabula)</u>
T	<u>Plover, piping (except Great Lakes watershed) ( Charadrius melodus)</u>
E	<u>Puma (=cougar), eastern ( Puma (=Felis) concolor cougar)</u>
T	<u>Sea turtle, green (except where endangered) ( Chelonia mydas)</u>
E	<u>Sea turtle, hawksbill ( Eretmochelys imbricata)</u>
E	<u>Sea turtle, Kemp's ridley ( Lepidochelys kempii)</u>
E	<u>Sea turtle, leatherback ( Dermochelys coriacea)</u>
T	<u>Sea turtle, loggerhead ( Caretta caretta)</u>
E	<u>Shiner, Cape Fear ( Notropis mekistocholas)</u>
T	<u>Silverside, Waccamaw ( Menidia extensa)</u>
T	<u>Snail, noonday ( Mesodon clarki nantahala)</u>
E	<u>Spider, spruce-fir moss ( Microhexura montivaga)</u>
E	<u>Spinymussel, James ( Pleurobema collina)</u>
E	<u>Spinymussel, Tar River ( Elliptio steinstansana)</u>
E	<u>Squirrel, Carolina northern flying ( Glaucomys sabrinus coloratus)</u>

E	<u>Sturgeon, shortnose ( Acipenser brevirostrum)</u>
<u>Status</u>	<u>Listing</u>
E	<u>Tern, roseate (northeast U.S. nesting pop.) ( Sterna dougallii dougallii)</u>
T	<u>Tern, roseate (Western Hemisphere except NE U.S.) ( Sterna dougallii dougallii)</u>
T(S/A)	<u>Turtle, bog (=Muhlenberg) (southern) ( Clemmys muhlenbergii)</u>
E	<u>Wedgemussel, dwarf ( Alasmidonta heterodon)</u>
E	<u>Whale, finback ( Balaenoptera physalus)</u>
E	<u>Whale, humpback ( Megaptera novaeangliae)</u>
E	<u>Whale, right ( Balaena glacialis (incl. australis))</u>
E	<u>Whale, sperm ( Physeter catodon (=macrocephalus))</u>
E	<u>Wolf, red (except where XN) ( Canis rufus)</u>
XN	<u>Wolf, red [XN] ( Canis rufus)</u>
E	<u>Woodpecker, red-cockaded ( Picoides borealis)</u>
Plants – 27	
<u>Status</u>	<u>Listing</u>
T	<u>Joint-vetch, sensitive ( Aeschynomene virginica)</u>
T	<u>Amaranth, seabeach ( Amaranthus pumilus)</u>
E	<u>Bittercress, small-anthered ( Cardamine micranthera)</u>
E	<u>Sedge, golden ( Carex lutea)</u>
E	<u>Coneflower, smooth ( Echinacea laevigata)</u>
E	<u>Avens, spreading ( Geum radiatum)</u>
E	<u>Lichen, rock gnome ( Gymnoderma lineare)</u>
E	<u>Bluet, Roan Mountain ( Hedyotis purpurea var. montana)</u>
E	<u>Sunflower, Schweinitz's ( Helianthus schweinitzii)</u>
T	<u>Pink, swamp ( Helonias bullata)</u>
T	<u>Heartleaf, dwarf-flowered ( Hexastylis naniflora)</u>
T	<u>Heather, mountain golden ( Hudsonia montana)</u>
T	<u>Pogonia, small whorled ( Isotria medeoloides)</u>
T	<u>Blazingstar, Heller's ( Liatris helleri)</u>
E	<u>Pondberry ( Lindera melissifolia)</u>
E	<u>Loosestrife, rough-leaved ( Lysimachia asperulaefolia)</u>

E	<u>Dropwort, Canby's ( Oxypolis canbyi)</u>
<u>Status</u>	<i>Listing</i>
E	<u>Harperella ( Ptilimnium nodosum)</u>
E	<u>Sumac, Michaux's ( Rhus michauxii)</u>
E	<u>Arrowhead, bunched ( Sagittaria fasciculata)</u>
E	<u>Pitcher-plant, green ( Sarracenia oreophila)</u>
E	<u>Pitcher-plant, mountain sweet ( Sarracenia rubra ssp. jonesii)</u>
E	<u>Chaffseed, American ( Schwalbea americana)</u>
E	<u>Irisette, white ( Sisyrinchium dichotomum)</u>
T	<u>Goldenrod, Blue Ridge ( Solidago spithamaea)</u>
T	<u>Spiraea, Virginia ( Spiraea virginiana)</u>
E	<u>Meadowrue, Cooley's ( Thalictrum cooleyi)</u>

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