



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA-HQ-OPP-2012-0795; FRL-9376-4]

***Glycine max* Herbicide-resistant Acetolactate Synthase; Exemption from the Requirement of a Tolerance**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Glycine max* herbicide-resistant acetolactate synthase (GM-HRA) enzyme when used as a plant-incorporated protectant inert ingredient in or on the food and feed commodities of soybean. Pioneer Hi-Bred International, Inc. (DuPont Pioneer), submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Glycine max* herbicide-resistant acetolactate synthase enzyme in or on the food and feed commodities of soybean.

DATES: This regulation is effective [*insert date of publication in the Federal Register*]. Objections and requests for hearings must be received on or before [*insert date 60 days after date of publication in the Federal Register*], and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the

SUPPLEMENTARY INFORMATION).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2012-0795, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the

Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8077; email address: cerrelli.susanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2012-0795 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before *[insert date 60 days after date of publication in the **Federal Register**]*. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2012-0795, by one of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail*: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery*: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Background and Statutory Findings

In the **Federal Register** of November 7, 2012 (77 FR 66781) (FRL-9367-5), EPA issued a document pursuant to FFDCFA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 2E8059) by Pioneer Hi-Bred International, Inc. (DuPont Pioneer), 7100 NW., 62nd Avenue, P.O. Box 1000, Johnston, Iowa, 50131. The petition requested that 40 CFR part 174 be amended by establishing an exemption from the requirement of a tolerance for residues of *Glycine max* herbicide-resistant acetolactate synthase (GM-HRA) when used as a plant-incorporated protectant (PIP) inert ingredient in or on the food and feed commodities of soybean. That document referenced a summary of the petition prepared by the petitioner, Pioneer Hi-Bred International, Inc. (DuPont Pioneer), which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is “safe.” Section 408(c)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....” Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider “available information concerning the cumulative effects of a particular pesticide's residues” and “other substances that have a common mechanism of toxicity.”

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Product Characterization Overview

Acetolactate synthase (ALS) protein, also known as acetohydroxyacid synthase (AHAS), is a key enzyme that catalyzes the first common step in the biosynthesis of the essential branched-chain amino acids, and is obligatory for plant development. The gene that encodes the GM-HRA protein, *gm-hra*, is derived from the *gm-als I* gene, a naturally occurring soybean gene that encodes for acetolactate synthase I (GM-ALS I) protein. Changes were made in the DNA gene sequence for *gm-als I* to produce *gm-hra*. The modified gene was then introduced into the plant's genome through particle bombardment (with the PHP30987A fragment). The GM-HRA protein is 604 amino acids in length, with a predicted molecular weight of 65 kilodaltons (kDa), and is >99% homologous with the native GM-ALS I protein produced in soybeans. This minor modification of the endogenous GM-ALS I protein to GM-HRA protein yields an enzyme that is resistant to ALS-inhibiting herbicides. Thus, the GM-HRA protein will be useful as a selectable marker in soybean transformation events. As part of a genetic construct introduced into a plant's genome, GM-HRA itself does not have insecticidal activity and is therefore functionally inert as part of a PIP. Potentially, GM-HRA also might serve as an herbicide-tolerant trait in soybeans, a use over which the U.S. Department of Agriculture (USDA) has separate regulatory jurisdiction.

B. Mammalian Toxicity Assessment

DuPont Pioneer, has submitted acute oral toxicity data demonstrating the lack of mammalian toxicity at relatively high levels of exposure to the pure GM-HRA protein. These data demonstrate the safety of the product at a level well above maximum possible exposure levels that are reasonably anticipated in the crop (Ref. 1).

An acute oral toxicity study in mice indicated that GM-HRA is nontoxic (Ref. 2). Two groups of five males and five females mice were orally dosed (via gavage) with 2,000 milligrams/kilograms body weight (mg/kg bwt) of the test substance, a biochemically and functionally equivalent, microbially produced GM-HRA protein. There were no adverse clinical signs or findings at necropsy in the test animals.

When proteins are toxic, they are known to act *via* acute mechanisms and at very low dose levels (Ref. 3). Since no acute oral effects were shown to be caused by GM-HRA, even at relatively high dose levels (up to 2,000 mg/kg bwt), the GM-HRA protein is not considered to be toxic. In support of this conclusion, amino acid sequence comparisons between the GM-HRA protein and known toxic proteins in protein databases found no similarities that would contradict the results of the acute oral study.

C. Allergenicity Assessment

Since GM-HRA is a protein, allergenic sensitivities were considered. Currently, no definitive tests exist for determining the allergenic potential of novel proteins. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by acid and proteases; they also may be glycosylated, and are present at high concentrations in food. Using a “weight-of-evidence” approach, EPA considered the source of the trait, amino acid sequence similarity with known allergens, its prevalence in

food, and biochemical properties of the protein, including *in vitro* digestibility in simulated gastric fluid (SGF), and glycosylation (Ref. 4). The results of the EPA's analysis are as follows:

1. *Source of the trait.* The donor organism is *Glycine max* (soybean), which has an endogenous gene (*gm-als I*) that encodes for acetolactate synthase I (GM-ALS I) protein. Although soybean is one of the major food allergens, none of the known soy allergens is a member of the ALS protein family, including ALS protein. ALS enzymes are widely distributed in nature, and *als* genes have been isolated from bacteria, fungi, algae and plants (Refs. 5, 6, 7, and 8). Amino acid sequencing (BLASTP analysis) yielded 12,451 structurally or functionally related protein accessions (Ref. 9). The *gm-hra* gene, coding for the proposed PIP inert ingredient GM-HRA protein, was produced by transforming the naturally occurring, herbicide-sensitive *gm-als I* genetic sequence. The new gene was introduced into the plant, and the resulting herbicide-tolerant GM-HRA protein differs from the ALS I protein by only two amino acids. Both of the two amino acid substitutions in GM-HRA are already present in commercially available crop varieties (soybean, sunflower, maize, and canola (Refs. 10, 11, 12 and 13)) that are naturally tolerant to ALS-inhibiting herbicides.

2. *Amino acid sequence.* A comparison of the amino acid sequence of GM-HRA with known allergens found no significant overall sequence similarity or identity at the level of eight contiguous amino acid residues, the level of sensitivity needed to detect potential allergens.

3. *Prevalence in food.* ALS enzymes have been part of the human diet by virtue of their presence in soybeans and other commercial food crops (soybean, maize, wheat, rice,

and canola). Some of these enzymes contain natural mutations that include the same two amino acid substitutions as GM-HRA protein that render them tolerant to ALS-inhibiting herbicides (Ref. 12), and no ALS-related food allergies have been reported.

4. *Digestibility.* The GM-HRA protein was rapidly digested (in less than 30 seconds) in simulated mammalian gastric fluid (which has a highly acidic pH of 1.2 and includes the protein digesting enzyme, pepsin, found in gastric fluid) after incubation at 37°C.

5. *Glycosylation.* The GM-HRA protein expressed in soybean is not glycosylated. Considering all of the available information, EPA has concluded that the potential for GM-HRA to be a food allergen is minimal.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCa section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers and major identifiable subgroups of consumers, including infants and children, to the proposed pesticide PIP inert residue, GM-HRA protein, and to other related substances. This protein is an enzyme produced in soybean by a gene that was genetically derived from a naturally occurring soybean gene that encodes an herbicide-sensitive ALS enzyme. The altered gene is reinserted into soybean, and the resulting GM-HRA protein has greater than 99% similarity with the natural herbicide-sensitive

protein enzyme, differing only in two amino acids (Ref. 13). These minor changes confer resistance of the enzyme to herbicidal pesticides that inhibit ALS enzymes, which is what allows the GM-HRA protein to be used as a selectable herbicide-tolerant marker in soybean transformation events. The two amino acid substitutions found in the engineered GM-HRA protein also occur as natural mutations in other commercially available, non-genetically modified crop varieties that are tolerant to ALS-inhibiting herbicides, and thus human exposure to the naturally occurring protein, in addition to the proposed PIP inert, is anticipated. The only route of human exposure that is likely, however, is through the human diet, since the proposed PIP inert ingredient (and the related naturally occurring ALS enzymes) is contained within plant cells, which reduces potential human exposure via other routes to negligible. Exposure *via* residential or lawn use is not expected because the intended use sites are all agricultural. Though highly unlikely, should residues of GM-HRA appear in drinking water as a result of its use as a PIP inert ingredient in soybean, the risk to humans would be very unlikely, based on the protein's lack of mammalian toxicity demonstrated in the acute oral toxicity study and the lack of amino acid similarity with known protein toxins and allergens (see Unit III).

V. Cumulative Effects from Substances with a Common Mechanism of Toxicity

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

Based on the results of acute toxicity testing, EPA concluded that the proposed PIP inert, GM-HRA, is not toxic. EPA also concluded that no toxic or allergenic

metabolites are produced in soybean or other edible crops from the activity of this catabolic enzyme. In addition, GM-HRA as encoded by the *gm-hra* gene was previously evaluated for its safety by the U.S. Food and Drug Administration (FDA) in two other transgenic soybean events. In one event, the gene was modified to produce high oleic soybean oil (OECD Unique ID No. DP-305423-1), and the other provided glyphosate and ALS-inhibiting herbicide tolerance (OECD Unique ID No. DP-356043-5) (Refs.14 and 15). Based upon the information submitted, FDA concluded that the safety profiles of these soybean events, the GM-HRA protein were not materially different from that of other marketed soybean varieties, and no safety concerns with the protein were identified (Refs.16 and 17).

EPA concludes that there are no cumulative effects associated with GM-HRA expected from the proposed use as a PIP inert ingredient in soybean. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at <http://www.epa.gov/pesticides/cumulative>.

VI. Determination of Safety for U.S. Population, Infants and Children

The data submitted and cited regarding potential health effects for the GM-HRA protein include the characterization of the expressed GM-HRA protein in soybean, as well as the acute oral toxicity, amino acid sequence comparisons, and *in vitro* digestibility study. The results of these studies were used to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies was considered.

As discussed in unit III, the acute oral toxicity data submitted supports the prediction that the GM-HRA protein would be nontoxic to humans. Moreover, amino acid sequence analysis demonstrated that GM-HRA was not similar to any known protein toxin or allergen. Other data considered as part of the allergenicity assessment included: The structural and functional similarity of GM-HRA protein with naturally occurring ALS proteins from soybean and other food crops; the ALS proteins are not associated with food allergenicity; the protein rapidly degraded in the highly acidic digestibility study; and GM-HRA protein not glycosylated when expressed in the plant. GM-HRA protein is therefore not expected to be a human allergen.

Finally, and specifically with regard to infants and children, FFDCa section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCa section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children.

Based on its review and consideration of all the available information, the Agency concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of the GM-HRA protein and the genetic material necessary for its production when used as a PIP inert ingredient in or on food and feed commodities of soybean. This includes all

anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has also concluded, for the reasons discussed in more detail above, that there are no threshold effects of concern and, as a result, that an additional margin of safety for infants and children is unnecessary in this instance.

VII. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDC section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDC section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for GM-HRA protein in soybean.

VIII. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of *Glycine max* herbicide-resistant acetolactate synthase (GM-HRA) enzyme in or on the food and feed commodities of soybean when used as a plant-incorporated protectant inert ingredient.

IX. References

1. U.S. EPA. 2012. Review of Product Characterization and Human Health Data for *Glycine max* Herbicide-Tolerant Acetolactate Synthase (GM-HRA) protein expressed in Event 82117 soybean (OECD Unique ID. DP-Ø82117-3) in support of an Exemption from the Requirement of a Tolerance (Petition No. 2E8059) when used as a Plant-Incorporated Protectant (PIP) Inert Ingredient in soybean. Memorandum from A. Waggoner, and J. Kough, Ph.D. to S. Cerrelli. (Dated December 20, 2012).
2. Finlay, C. (2006) GM-HRA: Acute Oral Toxicity Study in Mice. Study Report No. PHI-2006-008, Unpublished study prepared by E.I. du Pont de Nemours and Company, August 9, 2006. 41 pgs. MRID No. 48872004.
3. Sjoblad, R. D., J. T. McClintock, and R. Engler (1992) "Toxicological Considerations for Protein Components of Biological Pesticide Products," *Regulatory Toxicology and Pharmacology* 15:3-9.
4. CAC (2003) Alinorm 03/34: Joint FAO/WHO Food Standard Programme. *Codex Alimentarius Commission*, Twenty-Fifth Session, 30 July 2003. Rome, Italy. Appendix III: Guideline for Conduct of Food Safety Assessments of Foods Derived from Recombinant-DNA Plants; Appendix IV: Annex on Assessment of Possible Allergenicity. *CAC*, 47-60.
5. Friden, P., Donegan, J., Mullen, J., Tsui, P., Freundlich, M., Eoyang, L.,

Weber, R., and Silverman, P.M. (1985) The *ilvB* locus of *Escherichia coli* K-12 is an operon encoding both subunits of acetohydroxyacid synthase I. *Nucleic Acids Research* 13: 3979-3993.

6. Falco, S.C., Dumas, K.D., and Livak, K.J. (1985) Nucleotide sequence of the yeast ILV2 gene which encodes acetolactate synthase. *Nucleic Acids Research* 13: 4011-4027.

7. Reith, M. and Munholland, J. (1995) Complete nucleotide sequence of the *Porphyra purpurea* chloroplast genome. *Plant Molecular Biology Reporter* 7: 333-335.

8. Mazur, B., Chiu, C.-F., and Smith, J.E. (1987) Isolation and characterization of plant genes coding for acetolactate synthase, the target enzyme for two classes of herbicides. *Plant Physiology* 85: 1110-1117.

9. Krauss, A. (2012) Evaluation of the Amino Acid Sequence Similarity of the GM-HRA Protein to the NCBI Protein Sequence Datasets. Study Report No. PHI-2006-071/070. Unpublished study prepared by Pioneer Hi-Bred International, Inc., January 23, 2012. 8251 pgs. MRID No. 48872006.

10. Sebastian, S.A., Fader, G.M., Ulrich, J.F., Forney, D.R., Chaleff R.S. (1989) Semidominant Soybean Mutation for Resistance to Sulfonylurea Herbicides. *Crop Science* 29:1403-1408.

11. Lee, K.Y., Townsend, J., Tepperman, J., Black, M., Chiu, C.F., Mazur, B., Dunsmuir, P., and Bedbrook, J. (1988) The molecular basis of sulfonylurea herbicide resistance in tobacco. *EMBO Journal* 7(5): 1241-1248.

12. Tan, S., Evans, R., and Singh, B. (2006) Herbicidal inhibitors of amino acid biosynthesis and herbicide-tolerant crops. *Amino Acids* 30: 195-204.

13. Locke, M., Cressman, B., Lu, A., Mathesius, C., Rood, T., and Sanders, C. (2012) Description, Derivation, Mode of Action and Familiarity of the GM-HRA Enzyme. Study Number: PHI-2012-020. Unpublished study prepared by Pioneer Hi-bred International, Inc., June 25, 2012. 22 pgs. MRID No. 48872003.
14. US-FDA (2007a) Biotechnology Consultation Note to the File BNF No. 000108. U.S. Food and Drug Administration,
<http://www.fda.gov/Food/Biotechnology/Submissions/ucm155604.htm>.
15. US-FDA (2009a) Biotechnology Consultation Note to the File BNF No. 000110. U.S. Food and Drug Administration,
<http://www.fda.gov/Food/Biotechnology/Submissions/ucm155595.htm>.
16. US-FDA (2007b) Biotechnology Consultation Agency Response Letter BNF No. 000108. U.S. Food and Drug Administration,
<http://www.fda.gov/Food/Biotechnology/Submissions/ucm155575.htm>.
17. US-FDA (2009b) Biotechnology Consultation Agency Response Letter BNF No. 000110. U.S. Food and Drug Administration,
<http://www.fda.gov/Food/Biotechnology/Submissions/ucm155567.htm>.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCa section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded

mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 174

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

Dated: January 17, 2013

Steven Bradbury,
Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 174--[AMENDED]

1. The authority citation for part 174 continues to read as follows:

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

2. Add §174.533 to subpart W to read as follows:

§174.533 *Glycine max* Herbicide-Resistant Acetolactate Synthase (GM-HRA) inert ingredient; exemption from the requirement of a tolerance.

Residues of *Glycine max* herbicide-resistant acetolactate synthase (GM-HRA) enzyme in or on the food and feed commodities of soybean are exempt from the requirement of a tolerance when used as a plant-incorporated protectant inert ingredient.