

## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

[Docket No. 97-091-1]

**AgrEvo USA Co.; Receipt of Petition for Determination of Nonregulated Status for Canola Genetically Engineered for Glufosinate Tolerance**

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for canola designated as Transformation Event T45, which has been genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this canola presents a plant pest risk.

**DATES:** Written comments must be received on or before December 1, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97-091-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-091-1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690-2817 to facilitate entry into the reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. James Lackey, Biotechnology Evaluation, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734-4885; e-mail: mkpeterston@aphis.usda.gov.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "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," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On July 24, 1997, APHIS received a petition (APHIS Petition No. 97-205-01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for canola (*Brassica napus* L.) designated as Transformation Event T45 (event T45), which has been genetically engineered for tolerance to the herbicide glufosinate. The AgrEvo petition states that the subject canola should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, event T45 canola has been genetically engineered to contain the *pat* gene derived from *Streptomyces viridochromogenes*. The *pat* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. Expression of the *pat* gene is controlled by the 35S promoter and terminator derived from the plant pathogen cauliflower mosaic virus. The *Agrobacterium tumefaciens* method was used to transfer the added genes into the parental cultivar *B. napus* var. AC EXCEL.

Event T45 canola has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pests. The subject canola has been field tested in Canada since 1995, and in the U.S. since 1996 under APHIS permits. In the process of reviewing the permit applications for field trials of this canola, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination. Event T45 canola has

been approved for commercial sale in Canada.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U. S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984-23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. AgrEvo has begun consultation with FDA on the subject canola.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of AgrEvo's event T45 canola, and the availability of APHIS' written decision.

**Authority:** 7 U.S.C. 150aa-150jj, 151-167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 24th day of September 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97-25858 Filed 9-29-97; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

#### **Fresh Garlic From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On June 20, 1997, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers nine producers/exporters of subject merchandise. The period of review is November 1, 1995, through October 31, 1996.

We gave interested parties an opportunity to comment on the

preliminary results. Since we received no comments from interested parties, the final results are the same as our preliminary results. The final dumping margin is listed below the section entitled "*Final Results of the Review.*"

**EFFECTIVE DATE:** September 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Andrea Chu or Robin Gray, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4733.

#### **SUPPLEMENTARY INFORMATION:**

##### **Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (April 1997).

##### **Background**

On June 20, 1997, the Department published the preliminary results of administrative review (62 FR 33601) of the antidumping duty order on fresh garlic from the PRC (November 16, 1994, 59 FR 59209). Because we determined that one named respondent, Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd., failed to submit a complete response to our questionnaire and the remaining named respondents failed to respond at all to our questionnaires, we preliminarily determined to use facts otherwise available for cash deposit and assessment purposes for all PRC producers/exporters of the subject merchandise. We received no comments from interested parties on our preliminary results.

We have conducted this administrative review in accordance with section 751 of the Tariff Act.

##### **Scope of the Review**

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing and level of decay.

The scope of this order does not include: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

##### **Final Results of the Review**

As a result of our review, we determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise from the PRC for the period November 1, 1995 through October 31, 1996.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) for all PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 376.67 percent; and (2) for other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation