

I. Background

In the **Federal Register** of January 22, 2001 (66 FR 6627), FDA announced the availability of a guidance document entitled "FDA Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments Intended for Human Food Use for Cry9C Protein Residues." Cry9C is a pesticidal protein in the STARLINK variety of yellow corn that makes the corn more resistant to certain types of insects. EPA authorized STARLINK corn only for use in animal feed. EPA did not authorize the use of STARLINK corn in human food because of unresolved questions about the allergenic potential of the Cry9C protein. Although restricted to animal food use, some STARLINK corn was commingled with yellow corn intended for human use. In addition, in certain limited cases, the Cry9C protein was also detected in corn seeds of a non-STARLINK variety of corn or in corn from such seeds. In response to these findings, Aventis S.A. (the developer of STARLINK corn), EPA, FDA, the U.S. Department of Agriculture, and the food industry undertook efforts starting in 2000 to remove all STARLINK corn from the food supply. Among other measures, FDA issued guidance recommending that corn dry milling and masa operations screen yellow corn (and milled yellow corn in certain situations) to minimize the production of human food products with corn containing the Cry9C protein. Corn containing the Cry9C pesticide is adulterated under

section 402(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(B)) if such corn is for human food use because there is no tolerance or exemption from the need for a tolerance under section 408 of the act (21 U.S.C. 346a). Therefore, FDA recommended that manufacturers who detected Cry9C-containing corn in any lot should divert the lot to animal feed or industrial use.

In the **Federal Register** of October 17, 2007 (72 FR 58978), EPA announced the availability of its draft "White Paper Concerning Dietary Exposure to Cry9C Protein Produced by STARLINK Corn and the Potential Risks Associated with Such Exposure" (draft White Paper), in which it concluded that the Cry9C protein has been sufficiently removed from the human food supply to render the level of risk low enough that continued testing for the protein in yellow corn at dry mills and masa production facilities provides no additional human health protection. EPA reached that conclusion based on information including results from more than 4 million tests for Cry9C at corn handling operations over the past 7 years and an exposure assessment by Exponent, Inc., of the levels of Cry9C still present in the U.S. food supply. Based on its analysis, EPA recommended in its draft White Paper that FDA withdraw its guidance on the sampling and testing of yellow corn grain for Cry9C at dry mills and masa production facilities.

In response to the EPA recommendation that FDA withdraw its

guidance on the sampling and testing of yellow corn grain for Cry9C at dry mills and masa production facilities (72 FR 58978), FDA announced that it was seeking comment on whether to withdraw its guidance document entitled "FDA Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments Intended for Human Food Use for Cry9C Protein Residues" (72 FR 58980, October 17, 2007). FDA received five comments, all from trade associations, that supported withdrawal of the guidance document.

In its final "White Paper Concerning Dietary Exposure to Cry9C Protein Produced by STARLINK Corn and the Potential Risks Associated With Such Exposure," EPA continues to recommend, as reflected elsewhere in this issue of the **Federal Register**, that FDA withdraw its guidance. Based on EPA's recommendation, the comments that FDA received that support withdrawal of the guidance, and its own evaluation of these circumstances, FDA is withdrawing its guidance document entitled "FDA Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments Intended for Human Food Use for Cry9C Protein Residues."

Dated: April 17, 2008.

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Associate Commissioner for Policy and Planning.

[FR Doc. E8-8805 Filed 4-24-08; 8:45 am]

BILLING CODE 4160-01-S