

dietary, non-dietary, or aggregate exposure to esfenvalerate residues.

F. International Tolerances

Codex maximum residue levels (MRLs) have been established for residues of fenvalerate on a number of crops that also have U.S. tolerances. There are some minimal differences between the section 408 tolerances, and certain Codex MRL values for specific commodities. These differences could be caused by differences in methods to establish tolerances, calculate animal feed, dietary exposure, and as a result of different agricultural practices. Therefore, some harmonization of these maximum residue levels may be required.

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-2004-0064; FRL-7354-9]

Indoxacarb; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP-2004-0064, must be received on or before June 4, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2004-0064. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in

the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper

receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2004-0064. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to toopp-docket@epa.gov, Attention: Docket ID number OPP-2004-0064. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically

captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID number OPP-2004-0064.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP-2004-0064. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 15, 2004.

Betty Shackleford,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary

unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Number 4 (IR-4)

PP 2E6482

EPA has received a pesticide petition 2E6482 from IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.564(a) by revoking Brassica, head and stem, subgroup at 5.0 parts per million (ppm), and establishing tolerances for residues of the insecticide, indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-(methoxycarbonyl)-[4-(trifluoromethoxy)phenyl] amino carbonyl indeno 1,2-e 1,3,4 oxadiazine-4a3H)-carboxylate] and its R-enantiomer [R-methyl 7-chloro-2,5-dihydro-2-methoxycarbonyl)-[4-(trifluoromethoxy) phenyl] amino carbonyl indeno 1,2-e 1,3,4 oxadiazine-4a3H)-carboxylate] in or on the raw agricultural commodities (RACs) vegetable, Brassica, leafy, group 5 at 12 ppm, and turnip at 12 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by du Pont de Nemours and Company, Crop Protection, Wilmington, DE, 19898.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of indoxacarb in plants is adequately understood to support these tolerances. Plant metabolism studies in cotton, lettuce, grapes and tomatoes showed no significant metabolites. The only significant residue was parent compound.

2. *Analytical method.* The plant residue enforcement method detects and quantitates indoxacarb in various matrices including lettuce, tomato, pepper, cabbage, broccoli, cauliflower, apple, pear, grape, cottonseed, tomato, mustard greens, and apple processed commodity samples by gas chromatography mass spectrometry

detection (GC-MSD). The limit of quantitation (LOQ) of the method allows monitoring of crops with indoxacarb residues at or above the levels proposed in these tolerances.

3. *Magnitude of residues.* The residue study for mustard greens is as follows: Residue studies were conducted at a total of five field sites. All studies were done using Avaunt Insecticide containing 30% active ingredient 300 g DPX KN128 per kg, (w/w). Four broadcast applications of Avaunt Insecticide were made at each test site at a maximum rate of 0.067 lb a.i. DPX-KN128/acre/application maximum seasonal use rate of 0.267 lb DPX-KN128/(acre). Applications were made approximately 3 days apart. Residues were measured as the combination of DPX-KN128 and IN-KN127 enantiomers not resolved by the analytical method. Maximum residues of KN128/KN127 in individual duplicate samples were 9.8 ppm at a PHI of 3 days range 1.2, 9.8 ppm. Residues for head and stem Brassica are already established based on previously submitted data for cabbage, broccoli, and cauliflower.

B. Toxicological Profile.

An assessment of the toxic effects caused by indoxacarb is discussed in Unit III.A. and Unit III.B. of the **Federal Register** dated July 2, 2003 (68 FR 737765) (FRL-7310-7).

C. Aggregate Exposure

1. *Dietary exposure.* Chronic dietary exposure resulting from the currently approved use of indoxacarb on apples, broccoli, cabbage, cauliflower, cotton, cranberry (current section 18 use), peach (current EUP use), pears, peppers, sweet corn, tomatoes, alfalfa, lettuce, peanuts, potatoes, soybeans, and the proposed uses on grapes, cherries (proposed EUP use), crop group 5 - Brassica (cole) leafy vegetables group, and turnip, tops (greens) are well within acceptable limits for all population subgroups. Tolerances for indoxacarb are pending to support agricultural use on grapes, and temporary tolerances for indoxacarb are pending to support agricultural use on cherries. Tolerances are also proposed to support agricultural uses for crop group 5, Brassica (cole) leafy vegetables group, and turnip, tops (greens). The established tolerance 5 ppm for Brassica, head and stem, subgroup 5A is being revoked.

i. *Food—Chronic dietary exposure assessment.* The Chronic Module of the Dietary Exposure Evaluation Model (DEEM), Exponent, Inc. formerly Novigen Sciences, Inc., 1997 Version 7.72) was used to conduct the assessment with the reference dose

(RfD) of 0.02 milligrams/kilogram/day (mg/kg/day). The analysis used overall mean field trial values, processing factors, and projected peak percent crop treated (PCT) values. Secondary residues in milk, meat, and poultry products were also included in the analysis. The chronic dietary exposure to indoxacarb is 0.000089 mg/kg/day, and utilizes 0.4% of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, children age 1-6 years, is 0.000238 mg/kg/day, and utilizes 1.2% of the RfD.

2. *Acute dietary exposure.* The Tier 3 analysis used distributions of field trial residue data adjusted for projected peak PCT. Secondary residues in milk, meat and poultry products were also included in the analysis.

ii. *Drinking water.* Indoxacarb is highly unlikely to contaminate ground water resources due to its immobility in soil, low water solubility, high soil sorption, and moderate soil half-life. Based on the EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Groundwater (SCI-GROW) models the estimated environmental concentrations (EECs) of indoxacarb and its R-enantiomer for acute exposures are estimated to be 6.84 parts per billion (ppb) for surface water and 0.0025 ppb for ground water. The EECs for chronic exposures are estimated to be 0.316 ppb for surface water and 0.0025 ppb for ground water.

2. *Non-dietary exposure.* Indoxacarb products are not labeled for residential non-food uses, thereby eliminating the potential for residential exposure. Non-occupational, non-dietary exposure for DPX-MP062 has not been estimated because the proposed products are limited to commercial crop production. Therefore, the potential for non-occupational exposure is insignificant.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of indoxacarb would be cumulative with those of any other chemical compounds. Oxadiazine chemistry is new, and indoxacarb has a novel mode of action compared to currently registered active ingredients.

E. Safety Determination

1. *U.S. population.* Dietary and occupational exposure will be the major routes of exposure to the U.S. population. The chronic dietary exposure to indoxacarb is 0.000089 mg/kg/day, which utilizes 0.4% of the RfD

for the overall U.S. population, using mean field trial values, processing factors, and projected peak PCT values. The percent of the acute population adjusted dose (aPAD) 7.3% for the overall U.S. population shows that an adequate margin of safety exists. Using only pesticide handlers exposure database (PHED) data levels A and B (those with a high level of confidence), the margin of exposures for occupational exposure are 650 for mixer/loaders and 1,351 for airblast applicators (worst-case). Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the aggregate exposure of residues of indoxacarb including all anticipated dietary exposure and all other non-occupational exposures. There are residential uses of indoxacarb pending; however, the potential exposure calculation is considered extremely minimal. Drinking water levels of comparison (DWLOCs), theoretical upper allowable limits on the pesticide's concentration in drinking water, were calculated to be much higher than the EECs. The chronic DWLOCs ranged from 198 to 697 ppb. The acute DWLOCs ranged from 440 to 3,890 ppb. Thus, the estimated levels of indoxacarb in drinking water are well below the DWLOC.

2. Infants and children. Chronic dietary exposure of the most highly exposed subgroup in the population, children age 1–6 years, is 0.000238 mg/kg/day 1.2% of the reference dose (RfD). For infants non-nursing, (1 year), the exposure accounts for 0.3% of the RfD. For acute exposure at the 99.9th percentile based on a Tier 3 assessment, the exposure was 0.013973 mg/kg/day (11.6% aPAD) for children 1–6 years, and 0.026036 mg/kg/day (21.7% aPAD) for non-nursing infants. Based on the completeness and reliability of the toxicity data, the lack of toxicological endpoints of special concern, the lack of any indication that children are more sensitive than adults to indoxacarb, and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of indoxacarb, including all anticipated dietary exposure, and all other non-occupational exposures. Accordingly, there is no need to apply an additional safety factor for infants and children.

F. International Tolerances

To date, no international tolerances exist for indoxacarb.

[FR Doc. 04–9723 Filed 5–4–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0116; FRL–7356–3]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period January 1, 2004 to March 31, 2004, to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0116. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select “search,” then key in the appropriate docket ID number.

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A “specific exemption” authorizes use of a pesticide against specific pests