

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. References

1. EPA Memorandum. Roger Gardner to Manying Xue. "Addendum to a previous review of a petition for an exemption from the requirement of a tolerance (PP# 1F06338) for 2,6-DIPN (PC 055803) in/on stored potatoes (EPA File Symbol No. 34704-IUE; DP Barcodes D276743 and D276753; Submission Nos. S601233 and S601234)." March 7, 2003.
2. EPA Memorandum. Roger Gardner to Driss Benmhend. "Petition for an exemption from the requirement of a tolerance (PP# 1F06338) for 2,6-DIPN (PC 055803) in/on stored potatoes (EPA File Symbol No. 34704-IUE; DP Barcodes D276743 and D276753; Submission Nos. S601233 and S601234)." December 10, 2002.
3. EPA Memorandum. Russell S. Jones to Driss Benmhend. "Renewal Request for an Experimental Use Permit for Amplify® Sprout Inhibitor (EPA Symbol No. 034704-EUP-13), containing 99.7% 2,6-Diisopropyl-naphthalene [2,6-DIPN; (Chemical No. 055803)] as its Active Ingredient; and a Petition to Extend the Temporary Exemption from the Requirement of a Tolerance on Stored Potatoes (PP# 8G05008). Review of Toxicity, Metabolism, and Residue Chemistry Studies. DP Barcodes D267369 and D267587; Case Nos. 062532 and 290334; Submission Nos. S581969 and S582755; MRIDs 451632-01 and -02." August 3, 2000.
4. EPA Memorandum. Russell S. Jones to Driss Benmhend. "Amplify® Sprout Inhibitor (EPA Symbol No. 034704-EUP-13), containing 99.7% 2,6-Diisopropyl-naphthalene [2,6-DIPN; (Chemical No. 055803)] A New Active Ingredient; and a Petition For Exemption from the Requirement of Tolerances for 2,6-DIPN on Food Commodities (PP# 1F06338). Response to Comments Received Following Publication of an FR Notice Regarding a Request for a Tolerance Exemption for

2,6-DIPN. DP Barcode D278840; Case No. 070700; Submission No. S601234; No MRID Nos." August 7, 2000.

5. Lake Michigan Lakewide Management Plan (LaMP Study). United States Environmental Protection Agency, Office of Water, Chapter 5 pp 5-125. April 2000.

IX. Statutory and Executive Order Reviews

This final rule establishes a temporary tolerance under section 408(d) of the FFDCA 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 rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). 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.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). 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); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the temporary 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. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General