



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2024-0222; FRL-11995-01-OCSP]

Helicoverpa zea nudiviruses 2 strain 90DR71; Receipt of Application for Emergency

Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Colorado Department of Agriculture (CDA) to use the pesticide *Helicoverpa zea nudiviruses 2 strain 90DR71* to treat up to 1,750 acres of sweet corn in Delta and Montrose Counties in CO to manage corn earworm. The applicant proposes the use of an active ingredient not included in any currently registered pesticide products. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2024-0222, by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (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 <https://www.epa.gov/dockets/where-send-comments-epa-dockets>.

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

FOR FURTHER INFORMATION CONTACT: Charles Smith, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; main telephone number: (202) 566-1030; email address: RDfRNotices@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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Colorado Department of Agriculture has requested the EPA Administrator to issue a specific exemption for the use of *Helicoverpa zea* nucleopolydnavirus 2 strain 90DR71 to control corn earworm in sweet corn. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant states that unprecedented outbreaks in 2023 of corn earworm (*Helicoverpa zea*) were not adequately controlled, leading to average losses of 52%. Testing suggests widespread insecticide resistance has developed, and the applicant asserts that there is an urgent need for additional methods to manage corn earworm to produce an economically viable sweet corn crop in Colorado. The active ingredient of the requested use is an insect virus transmitted by mating, which infects the reproductive tissues of adult moths, causing

them to produce fewer eggs with many developing into sterile adult moths. Similar to successful sterile insect techniques used for other pest species, the use would be part of an area-wide strategy, including insecticides targeting the eggs and larvae. Treatment is via release of sterile moths carrying this virus, and field trials have demonstrated reductions in both larvae and corn ear damage relative to controls.

The Applicant proposes to make no more than two applications per treatment site, releasing up to 100 sterile moths per acre, between June 15 to September 23, 2024, at approximately 21 and 15 days prior to harvest of the crop. Overall, an estimated total of 350,000 sterile moths would be used over approximately 1,750 acres.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Colorado Department of Agriculture.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 29, 2024.

Charles Smith,

Director, Registration Division,

Office of Pesticide Programs.

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