



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

Ms. Shannon Yanocha  
Manager, Regulatory Affairs  
Nichino America, Inc.  
4550 New Linden Hill Road, Suite 501  
Wilmington, DE 19808

MAR 26 2010

Dear Ms. Yanocha:

Subject: Flutolanil 40 SC Fungicide  
EPA Reg. No. 71711-28  
Your submission of March 13, 2009  
OPPIN Decision Number D407125

The amendment referred to above, submitted in connection with registration under section (3) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) is acceptable.

If you have any questions, please contact Lisa Jones of my team at (703) 308-9424 or [jones.lisa@epa.gov](mailto:jones.lisa@epa.gov).

Sincerely,

*Lisa Jones* FOR

Shaja B. Joyner  
Product Manager (20)  
Fungicide Branch  
Registration Division (7504P)

Enclosure: Stamped label

**Flutolanil 40SC**  
**FUNGICIDE****ACTIVE INGREDIENT:**

Flutolanil: N-[3-(1-methylethoxy) phenyl]-2-(trifluoromethyl) benzamide .....	40.0%
OTHER INGREDIENTS .....	60.0%
<b>TOTAL</b>	<b>100.0%</b>

Contains 3.8 lbs flutolanil per U. S. gallon

EPA Reg. No. 71711-28

EPA Est No. 37429-GA-2; 70815-GA-0001

Alternate Brand: Convoy® fungicide

**KEEP OUT OF REACH OF CHILDREN****CAUTION****FIRST AID**

<b>If swallowed</b>	<ul style="list-style-type: none"><li>• Call poison control center or doctor immediately for treatment advice.</li><li>• Have person sip a glass of water if able to swallow.</li><li>• Do not induce vomiting unless told to do so by the poison control center or doctor.</li><li>• Do not give anything by mouth to an unconscious person.</li></ul>
<b>If on skin or clothing</b>	<ul style="list-style-type: none"><li>• Take off contaminated clothing.</li><li>• Rinse skin immediately with plenty of water for 15-20 minutes.</li><li>• Call a poison control center or doctor for treatment advice.</li></ul>

**HOT LINE NUMBER**

Have the product container or label with you when calling a poison control center or doctor, or going for treatment. You may also contact 1-800-348-5832 for emergency medical treatment information.  
In case of fire or spills, information may be obtained by calling 1-800-424-9300.

**ACCEPTED**  
**with COMMENTS**  
**In EPA Letter Dated:**  
**MAR 26 2010**

Under the Federal Insecticide,  
Fungicide, and Rodenticide Act,  
as amended, for the pesticide  
registered under EPA Reg. No.

**71711-28**Net Contents: 2.5 gal

Active Ingredient Made in Japan; Formulated and Packaged in USA for

**Nichino America Inc.**  
4550 New Linden Hill Rd., Suite 501  
Wilmington, DE 19808  
888-740-7700

**PRECAUTIONARY STATEMENTS  
HAZARDS TO HUMANS AND DOMESTIC ANIMALS  
CAUTION**

Harmful if swallowed or absorbed through skin. Avoid contact with skin, eyes or clothing. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco or using the toilet. Remove and wash contaminated clothing before reuse.

**Personal Protective Equipment (PPE)**

**Applicators and other handlers must wear:**

- Long-sleeved shirt and long pants
- Chemical resistant gloves made of any waterproof material such as barrier laminate or polyvinyl chloride
- Shoes plus socks

If you want more options for chemical-resistant materials, follow the instructions for category C on an EPA chemical-resistance category selection chart.

**User Safety Requirements**

Follow the manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables exist, use detergent and hot water. Keep and wash PPE separately from other laundry.

**User Safety Recommendations**

- Users should wash hands before eating, drinking, chewing gum, using tobacco, or using the toilet.
- Users should remove clothing/PPE immediately if pesticide gets inside, then wash thoroughly and put on clean clothing.
- Users should remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

**ENGINEERING CONTROL STATEMENTS**

When handlers use closed systems, enclosed cabs, or aircraft in a manner that meets the requirements listed in the Worker Protection Standard (WPS) for agricultural pesticides (40 CFR 170.240(d)(4-6), the handler PPE requirements may be reduced or modified as specified in the WPS.

**ENVIRONMENTAL HAZARDS**

This product is toxic to fish and invertebrates. Do not apply to water, areas where surface water is present, or to intertidal waters below the mean high water mark. Do not contaminate water used for watering livestock or domestic purposes. Exposed treated seed or seed pieces may be hazardous to birds or other wildlife. Cover or collect treated seed spilled during loading and planting. Dispose of all excess treated seed and seed packaging by burial away from bodies of water. Do not contaminate bodies of water when disposing of planting equipment wash water.

**DIRECTIONS FOR USE**

**It is a violation of Federal law to use this product in a manner inconsistent with its labeling.**

Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your State or Tribe, consult the agency in your state responsible for pesticide regulation.

**AGRICULTURAL USE REQUIREMENTS**

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE) and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard.

Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI) of 12 hours.

PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water is:

- Coveralls
- Chemical-resistant gloves made of any waterproof material such as barrier laminate or polyvinyl chloride
- Shoes plus socks

**GENERAL INFORMATION**

Flutolanil 40SC is a systemic fungicide for control of Southern stem rot (white mold) *Sclerotium rolfsii*, and the limb/pod rot complex, *Rhizoctonia solani*, in peanuts; for control of sheath blight, and for control of black scurf, *Rhizoctonia solani*, in potatoes.

**Do not use Flutolanil 40SC in Nassau and Suffolk counties of New York state.**

**MIXING INSTRUCTIONS**

- Buffer the water in the spray tank.
- Fill the spray tank  $\frac{3}{4}$  full. Turn on spray tank agitation. Pour recommended amount of this material on the surface of water in the spray tank.
- Add balance of water to spray tank.
- Keep agitation running during filling and spraying operations.

**USE PRECAUTIONS**

- Do not use oil as carrier or add other additives to the finished spray.
- Rotational crop restrictions:  
Do not plant rotational crops, other than those listed in the table below for 365 days following the last application of Flutolanil 40SC.

Crop	Rotational/Plantback Interval
Cotton Peanuts Potatoes Soybeans Sugar beets	0 days following application
Wheat	30 days following application
Leafy vegetables (such as lettuce, spinach or celery) Small grain crops other than wheat (such as barley, rye or oats)	150 days following application
Corn (such as field, sweet or popcorn) Sorghum	240 days following application
All other crops	365 days following application

## SPRAY DRIFT

Avoiding spray drift at the application site is the responsibility of the applicator. The interaction of many equipment-and-weather-related factors determines the potential for spray drift. The applicator and the grower are responsible for considering all these factors when making decisions.

The following drift management requirements must be followed to avoid off-target drift movement from aerial applications to agricultural field crops.

1. The distance of the outermost nozzles on the boom must not exceed  $\frac{3}{4}$  the length of the wingspan or rotor.
2. Nozzles must always point backward parallel with the air stream and never be pointed downwards more than 45 degrees.

Where states have more stringent regulations, they must be observed.

The applicator must be familiar with and take into account the information covered in the **Aerial Drift Reduction Advisory Information**.

### Aerial Drift Reduction Advisory Information

[This section is advisory in nature and does not supersede the mandatory label requirements.]

#### Information on Droplet Size

The most effective way to reduce drift potential is to apply large droplets. The best drift management strategy is to apply the largest droplets that provide sufficient coverage and control. Applying larger droplets reduces drift potential, but will not prevent drift if applications are made improperly, or under unfavorable environmental conditions (see Wind, Temperature and Humidity, and Temperature Inversions).

#### Controlling Droplet Size

**Volume** – Use high flow rate nozzles to apply the highest practical spray volume. Nozzles with higher rated flows produce larger droplets.

**Pressure** – Do not exceed the nozzle manufacturer's recommended pressures. For many nozzle types, lower pressure produces larger droplets. When higher flow rates are needed, use higher flow rate nozzles instead of increasing pressure.

**Number of Nozzles** – Use the minimum number of nozzles that provide uniform coverage.

**Nozzle Orientation** – Orienting nozzles so that the spray is released parallel to the airstream produces larger droplets than other orientations and is the recommended practice. Significant deflection from horizontal will reduce droplet size and increase drift potential.

**Nozzle Type** – Use a nozzle type that is designed for the intended application. With most nozzle types, narrower spray angles produce larger droplets. Consider using low-drift nozzles. Solid stream nozzles oriented straight back produce the largest droplets and the lowest drift.

**Maintenance of Nozzles** – Periodically inspect and then replace nozzles to ensure proper chemical application.

#### Boom Length

For some use patterns, reducing the effective boom length to less than  $\frac{3}{4}$  of the wingspan or rotor length may further reduce drift without reducing swath width.

#### Application Height

Applications should not be made at a height greater than 10 feet above the top of the largest plants unless a greater height is required for aircraft safety. Making applications at the lowest height that is safe reduces exposure of droplets to evaporation and wind.

#### Swath Adjustment

When applications are made with a crosswind, the swath will be displaced downward. Therefore, on the up and downwind edges of the field, the applicator must compensate for this displacement by adjusting the path of

the aircraft upwind. Swath adjustment distance should increase, with increasing drift potential (higher wind, smaller drops, etc.)

### Wind

Drift potential is lowest between wind speeds of 2-10 mph. However, many factors, including droplet size and equipment type determine drift potential at any given wind speed. Application should be avoided below 2 mph due to variable wind direction and high inversion potential. **Note:** Local terrain can influence wind patterns. Every applicator should be familiar with local wind patterns and how they affect spray drift.

### Temperature and Humidity

When making applications in low relative humidity, set up equipment to produce larger droplets to compensate for evaporation. Droplet evaporation is most severe when conditions are both hot and dry.

### Temperature Inversions

Applications should not occur during a temperature inversion because drift potential is high. Temperature inversions restrict vertical air mixing, which causes small suspended droplets to remain in a concentrated cloud. This cloud can move in unpredictable directions due to the light and variable winds common during inversions. Temperature inversions are characterized by increasing temperatures with altitude and are common on nights with limited cloud cover and light to no wind. They begin to form as the sun sets and often continue into the morning. Their presence can be indicated by ground fog; however, if fog is not present, inversions can also be identified by the movement of smoke from a ground source or an aircraft smoke generator. Smoke that layers and moves laterally in a concentrated cloud (under low wind conditions) indicates an inversion, while smoke that moves upward and rapidly dissipates indicates good vertical air mixing.

### Sensitive Areas

Only apply the pesticide when the potential for drift to adjacent sensitive areas (e.g. residential areas, bodies of water, known habitat for threatened or endangered species, nontarget crops) is minimal (e.g. when wind is blowing away from the sensitive areas).

## APPLICATION DIRECTIONS FOR PEANUTS

Apply Flutolanil 40SC as a broadcast foliar application using spray equipment commonly used to apply leafspot fungicide treatments. In fields with a history of high disease, or under prolonged conditions conducive to disease infection and development, higher labeled rates (2 pints per acre) should be used for the most effective control. In such situations, sequential applications will provide more effective control than a single application. Flutolanil 40SC may be applied in tankmix with leafspot treatments that fall within the specified timing for Flutolanil 40SC application.

**Ground Application:** By ground, apply specified rate in 10-40 gallons of water per acre.

**Aerial Application:** By air, apply specified rate in 5-10 gallons of water per acre.

Crop	Disease	Rate Per Acre (pints/A)	Application Directions
Peanuts	Southern stem rot (white mold, <i>Sclerotium rolfsii</i> ); Limb/pod rot complex	2 pts	<b>One application program:</b> Apply 2 pints per acre about 50-70 days after planting.
		1 to 2 pts	<b>Two application program:</b> Apply 1 to 2 pints per acre. Apply 50-70 days after planting and repeat with a second application of 1 to 2 pints per acre about 30 days later. Use the higher rate in fields known to have high disease incidence.

	( <i>Rhizoctonia solani</i> )	½ to 1 pt	<b>Four application program:</b> Apply ½ to 1 pint per acre. Begin when conditions are favorable for soilborne disease development, generally 50-70 days after planting. Repeat application at 14 to 30 day intervals for a total of four applications.
<ul style="list-style-type: none"> <li>• Apply no more than a combined total of 4 pints per acre to peanuts as a broadcast application or through chemigation during a single growing season.</li> <li>• Do not apply within 40 days of harvest.</li> </ul>			

**In-Furrow Application:****Use Rate And Method Of Application (to control *Rhizoctonia*)**

Apply 25 fl oz of Flutolanil 40SC per acre (see referenced chart) as an in-furrow spray by directing spray uniformly over the seed, bottom and walls of the seed furrow and soil that is used to cover the seed in a 4-8 inch band prior to covering with soil. Use a minimum of 3 gallons of spray volume per acre. Use highest rate when disease conditions are expected to be severe, or if field has a history of *Rhizoctonia* infestation.

In-Furrow Application Rates	
Row Spacing	25 fl oz rate per acre
	fl oz product/1000 row ft
40" Row	1.86
38" Row	1.76
36" Row	1.68
32" Row	1.57
30" Row	1.48

Flutolanil 40SC may be applied to peanuts through chemigation. (See application techniques below).

**Chemigation Application:**

1. Determine the size of the area to be treated.
2. Determine the time required to apply ¼ to ½ inch of water over the area to be treated when the system and injection equipment are operated at normal pressures as recommended by the equipment manufacturer.
3. Using water, determine the injection pump output when operated at normal line pressure.
4. Determine the amount of Flutolanil 40SC required to treat the area covered by the irrigation system.
5. Add the required amount of Flutolanil 40SC to the solution tank with sufficient water to meet the injection time requirements.
6. Make certain the system is fully charged with water before starting injection of the Flutolanil 40SC solution. Time the injection to last at least as long as it takes to bring the system to full pressure.
7. Maintain constant solution tank agitation during the entire injection period.
8. Stop injection equipment after treatment is completed. Continue to operate the system until the Flutolanil 40SC solution has cleared the last sprinkler head. (Also see APPLICATION AND CALIBRATION TECHNIQUES FOR SPRINKLER IRRIGATION section below).

**Application and Calibration Techniques for Sprinkler Irrigation**

Apply this product only through center pivot, motorized lateral move, traveling gun, solid set, or portable (wheel move, side roll, end tow, or hand move) irrigation system(s). Do not apply this product through any other type of irrigation system. Crop injury, lack of effectiveness, or illegal pesticide residues in the crop can result from non-uniform distribution of treated water. If you have questions about calibration, you should contact State Extension Service specialists, equipment manufacturers, or other experts. Do not apply this product through irrigation systems connected to a public water system. 'Public water system' means a system for the provision to the public of piped water for human consumption if such system has at least 15 service connections or

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regularly serves an average of at least 25 individuals daily at least 60 days per year. Controls for both irrigation water and pesticide injection systems must be functionally interlocked, so as to automatically terminate pesticide injection when the irrigation water pump motor stops. A person knowledgeable of the irrigation system and responsible for its operation shall be present so as to discontinue pesticide injection and make necessary adjustments, should the need arise. The irrigation water pipeline must be fitted with a functional, automatic, quick-closing check valve to prevent the flow of treated irrigation water back toward the water source. The pipeline must also be fitted with a vacuum relief valve and low pressure drain, located between the irrigation water pump and the check valve, to prevent back-siphoning of treated irrigation water into the water source.

Always inject this product into irrigation water after it discharges from the irrigation pump and after it passes through the check valve. Never inject pesticides into the intake line on the suction side of the pump.

Pesticide injection equipment must be fitted with a functional, normally closed, solenoid-operated valve located on the intake side of the injection pump. Interlock this valve to the power system, so as to prevent fluid from being withdrawn from the chemical supply tank when the irrigation system is either automatically or manually turned off.

The pesticide injection pipeline must contain a functional, automatic, quick-closing check valve to prevent the flow of fluid back toward the injection pump. The irrigation line or water pump must include a functional pressure switch, which will stop the water pump motor when the water pressure decreases to the point where pesticide distribution is adversely affected.

Spray mixture in the chemical supply tank must be agitated at all times, otherwise settling and uneven application may occur. Do not apply when wind speed favors drift beyond the area intended for treatment.

This product may be used through two basic types of sprinkler irrigation systems as outlined in Sections A and B below. Determine which type of system is in place, then refer to the appropriate directions provided for each type.

**A. Center Pivot, Motorized Lateral Move, and Traveling Gun Irrigation Equipment:**

For injection of pesticides, these continuously moving systems must use a positive displacement injection pump, of either diaphragm or piston type, constructed of materials that are compatible with pesticides and capable of being fitted with a system interlock and capable of injection at pressures approximately 2-3 times those encountered within the irrigation water line. Venturi applicator units cannot be used on these systems. Thoroughly mix recommended amount of this product for acreage to be covered into same amount of water used during calibration and inject into system continuously for one revolution or run. Mixture in the chemical supply tank must be continuously agitated during the injection run. Shut off injection equipment after one revolution or run, but continue to operate irrigation system until this product has been cleared from last sprinkler head.

**B. Solid Set and Portable (Wheel Move, Side Roll, End Tow, or Hand Move) Irrigation Equipment:**

With stationary systems, an effectively designed in-line venturi applicator unit is preferred which is constructed of materials that are compatible with pesticides; however, a positive-displacement pump can also be used. Determine acreage covered by sprinkler. Fill tank of injection equipment with water and adjust flow to use contents over a 30 to 45 minute period. Mix desired amount of this product for acreage to be covered with water so that the total mixture of this product plus water in the injection tank is equal to the quantity of water used during calibration, and operate entire system at normal pressures recommended by the manufacturer of injection equipment used, for amount of time established during calibration. Agitation is recommended. This product can be injected at the beginning or end of the irrigation cycle or as a separate application. Stop injection equipment after treatment is completed and continue to operate irrigation system until this product has been cleared from last sprinkler head.



## APPLICATION DIRECTIONS FOR POTATOES

Do not apply Flutolanil 40SC to potatoes through chemigation.

## Potato In-furrow Use

Crop	Disease	Rate Per Acre (fl oz)	Application Directions
Potatoes	Black scurf ( <i>rhizoctonia solani</i> )	16 - 25 (see reference chart below)	<ul style="list-style-type: none"> <li>• Apply 16 to 25 fl oz per acre (see reference chart) as an in-furrow spray by directing spray uniformly around and over the seed piece in a 4 to 8 inch band prior to covering with soil.</li> <li>• Use a minimum of 3 gallons of spray volume per acre.</li> <li>• Use the higher rate where disease pressure is expected to be severe, or if field has a history of <i>Rhizoctonia</i> infestation.</li> </ul>
	Powdery scab ( <i>Spongospora subterranea</i> ) <b>Suppression only</b>		

## In-Furrow Application Rates

Row Spacing	16 fl oz/acre	25 fl oz/acre
	Fluid Ounces Product/ 1000 Row Ft.	Fluid Ounces Product/ 1000 Row Ft.
40" Row	1.19	1.86
38" Row	1.13	1.76
36" Row	1.08	1.68
34" Row	1.00	1.57
32" Row	0.95	1.48

## Potato Seed-Piece Treatment Use

Crop	Disease	Rate Per Acre Using 0.5 fl oz/100 lb Seed		Application Directions
		Planting Rate/A (lb cut seed)	lb/ai/A	
Potatoes	Black scurf, Rhizoctonia stem canker ( <i>Rhizoctonia solani</i> )	1,600	0.24	<ul style="list-style-type: none"> <li>• Apply 0.5 fl oz of product per 100 lb of seed pieces using a spray system or spray table equipped with shielding for this purpose.</li> <li>• Dilute in a 3:1 ratio, or less, of water to the product. Maintain agitation of the spray solution during application.</li> <li>• Dust formulations (with or without fungicides) may be applied to the seed pieces following application of Flutolanil 40SC. Make sure application area is well-ventilated or made in areas with equipment to remove airborne particles or mists.</li> </ul>
		1,800	0.27	
		2,000	0.30	
		2,200	0.33	
		2,400	0.36	

### APPLICATION DIRECTIONS FOR SEED TREATMENT USE ON COTTON, SOYBEAN AND SUGAR BEET

Crop	Disease	Rate (fl oz/100 lb seed)	Rate (lb ai/100 lb seed)		Application Directions
Cotton	<i>Rhizoctonia</i> sp	2.0 - 4.0	0.06 - 0.12		<ul style="list-style-type: none"> <li>• Apply 2 to 4 fl oz per 100 lb of seed using a spray system, spray table, or seed treatment equipment for this purpose.</li> <li>• If using a spray system, dilute 1 part product to three parts water or less. Maintain agitation of the spray solution during application.</li> </ul>
Soybean					
Sugarbeet					

The purchaser of this product is responsible for ensuring that all seed treated with this product are adequately dyed with a suitable color to prevent accidental use as food for man or feed for animals. As indicated in 40 CFR 153.155 – seed treatment products, any dye added to treated seed must be cleared for use in accordance with 40 CFR 180.910, 180.920, 180.950, 180.2010 or 180.2020.

#### Commercially treated seed should be labeled:

"This seed is treated with Flutolanil 40SC, a flutolanil product. Do not use treated seed for food, feed, oil production or any other purpose except planting. Do not allow children, pets or livestock to have access to treated seeds. Wear long pants, long sleeved shirt and protective gloves when handling treated seed. Treated seeds exposed on soil surface may be hazardous to wildlife. Cover or collect treated seed spilled during loading and planting. Dispose of all excess treated seed by burying seed away from bodies of water. Do not contaminate bodies of water when disposing of planting equipment wash water. Dispose of seed packaging or containers in accordance with local requirements."

#### STORAGE AND DISPOSAL

**Do not contaminate water, food, or feed by storage or disposal.**

**PESTICIDE STORAGE:** Store in a cool, dry place.

**PESTICIDE DISPOSAL:** Wastes resulting from the use of this product may be disposed of on site or at an approved waste disposal facility.

**CONTAINER DISPOSAL:** Nonrefillable container. DO NOT reuse or refill this container. Triple rinse (or equivalent) promptly after emptying. Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank and drain for 10 seconds after the flow begins to drip. Fill the container ¼ full with water and recap. Shake for 10 seconds. Pour rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times. Then, offer for recycling, if available, or reconditioning, if appropriate, or puncture and dispose of in a sanitary landfill, or by incineration, or, if allowed by State or local authorities, by burning. If burned, stay out of smoke.

**IMPORTANT: READ BEFORE USE**

By using this product, user or buyer accepts the following conditions, warranty, disclaimer of warranties and limitations of liability.

**CONDITIONS:** The directions for use of this product are believed to be accurate and must be followed carefully. However, because of extreme weather and soil conditions, use methods and other factors beyond the control of Nichino America, Inc. (NAI), it is impossible for NAI to eliminate all risks associated with the use of this product. As a result, crop injury or ineffectiveness is always possible. To the extent consistent with applicable law, all such risks are assumed by the user or buyer.

**DISCLAIMER OF WARRANTIES:** TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, WHICH EXTEND BEYOND THE STATEMENTS MADE ON THIS LABEL. No agent of NAI is authorized to make any warranties beyond those contained herein or to modify the warranties contained herein. To the extent consistent with applicable law, NAI disclaims any liability whatsoever for incidental or consequential damages, including, but not limited to, liability arising out of breach of contract, express or implied warranty (including warranties of merchantability and fitness for a particular purpose), tort, negligence, strict liability or otherwise.

**LIMITATIONS OF LIABILITY:** TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, THE EXCLUSIVE REMEDY OF THE USER OR BUYER FOR ANY AND ALL LOSSES, INJURIES OR DAMAGES RESULTING FROM THE USE OR HANDLING OF THIS PRODUCT, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE PAID, OR AT THE ELECTION OF NICHINO AMERICA, THE REPLACEMENT OF PRODUCT.