Final Cancellation Order for Three Dicamba Products
(Xtendimax with Vaporgrip Technology, Engenia, and FeXapan)

Summary

This notice announces the Agency's issuance of a final cancellation order for three pesticide products (Xtendimax with Vaporgrip Technology, EPA Reg. No. 524-617, Engenia, EPA Reg. No. 7969-345, and FeXapan, EPA Reg. No. 352-913), containing the active ingredient dicamba pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. sections 136-136y. This order is issued in light of an order of the United States Court of Appeals for the Ninth Circuit vacating these three registrations. Pursuant to the Court's order EPA considers these products no longer to be registered as of the time of the order June 3, 2020. Therefore, with limited exceptions, it is a violation of FIFRA for any person to sell or distribute these products. This cancellation order provides for the disposition of existing stocks of Xtendimax, Engenia, and FeXapan already in the possession of persons other than the registrant at the time of the order on June 3, 2020, and existing stocks in the possession of the registrant as of the time of the order on June 3, 2020. This cancellation order authorizes limited distribution of existing stocks of Xtendimax, Engenia, and FeXapan by commercial applicators and authorizes all other sale or distribution of existing stocks only to facilitate return to the manufacturer or for proper disposal. This cancellation order prohibits any use of existing stocks that is inconsistent with the previously-approved product labeling and prohibits use beyond July 31, 2020.

Background

In 2016, EPA conditionally registered three dicamba-based herbicide products, Xtendimax, Engenia, and FeXapan (also referred to herein as "these dicamba products"), under section 3 of FIFRA, 7 U.S.C. 136a, for post-emergent use on crops genetically engineered to be dicamba tolerant. The registrations were subject to an automatic two-year expiration. Prior to expiration, in the fall of 2018, EPA extended those registrations to allow use until December 20, 2020.

On January 11, 2019, the National Family Farm Coalition, Pesticide Action Network North America, Center for Biological Diversity, and Center for Food Safety, petitioned in the United States Court of Appeals for the Ninth Circuit for review of EPA's 2018 decision extending the registrations of Xtendimax, Engenia, and FeXapan until December 20, 2020. *National Family Farm Coalition, et. al., v. EPA*, No. 19-70115. On June 3, 2020, the Court issued its opinion, finding that EPA's registrations of these dicamba products were not supported by substantial evidence and vacating the registrations. The vacatur became effective immediately on June 3, 2020, and as of that date Xtendimax, Engenia, and FeXapan became unregistered. Thus, absent further order as provided here, sale and distribution of existing stocks of these dicamba products would be a violation of FIFRA.[1]

[1] FIFRA and EPA's regulations provides certain minor exceptions where distribution an of unregistered pesticide is lawful, *e.g.*, certain transfers (*see* 40 CFR 152.30), experimental use (FIFRA section 5 and 40 CFR part 172). This cancellation order does not prohibit such transfers.

Agency Authority to Issue a Cancellation Order to Regulate Existing Stocks

Before addressing the appropriateness of allowing sale, distribution, or use of existing stocks of these dicamba products, we first address the threshold issue of whether the Agency has the authority to issue a cancellation order in the circumstances presented by the vacatur. EPA has consistently read FIFRA as allowing the Agency to issue a cancellation order whenever a pesticide that has been sold with the imprimatur of a registration has that registration terminated, by any mechanism. Distributors and end-users may have possession of stocks of a pesticide product purchased in good faith after EPA issued a registration permitting distribution of the product in commerce and establishing conditions pertaining to the use of the product. The issuance of a cancellation order allows the Agency to appropriately regulate distribution and use of those stocks under the authority of section 6(a)(1) of FIFRA.

Upon issuance of the Court's vacatur order, distributors and end-users had possession of stocks of these dicamba products lawfully purchased pursuant to EPA-issued registrations permitting the products' sale and distribution in commerce and establishing conditions pertaining to the use of the products. These existing stocks have the potential to cause unreasonable adverse effects to human health and the environment if their use, including disposal, is not conducted in accordance with the products' label and EPA regulations. The issuance of a cancellation order allows the Agency to appropriately regulate distribution and use of those existing stocks.

In the case of Xtendimax, Engenia, and FeXapan, the Court vacated the registrations immediately. On May 21, 2020, EPA requested leave to file information on how it planned to issue a cancellation order that would address existing stocks, but because the Court declined to allow the filing, the parties did not have the opportunity to fully brief the question of what should happen to existing stocks of those products that are already in the channels of trade (*i.e.*, material that has been released for shipment and is in the hands of sellers, distributors, or users). Section 3(a) of FIFRA (7 U.S.C. § 136a(a)) states "except as provided by [FIFRA], no person in any State may distribute or sell to any person any pesticide that is not registered under [FIFRA]." Therefore, in the absence of any action by EPA, most sale and distribution of the formerly-registered products is unlawful under FIFRA as of the time of the order on June 3, 2020. The term "distribute or sell" is defined broadly in FIFRA section 2(gg) (7 U.S.C. §136(gg)), and includes, among other things, any "shipment" of unregistered pesticide. Without action by EPA, the vacatur of the registrations has made illegal not just any sale, but any further movement of material currently in the hands of distributors, retailers, and end users, including their shipment for disposal or return to the registrants. FIFRA section 12(a)(l)(A) (7 U.S.C. §136u)(a)(l)(A)) makes it unlawful for any person to sell or distribute an unregistered pesticide, and subjects any seller/distributor to potential civil or criminal penalties under FIFRA section 14 (7 U.S.C. §1361).

There is no corresponding provision of FIFRA that prohibits *use* (as opposed to distribution or sale) of unregistered pesticides (*see* FIFRA section 12 (7 U.S.C. §136j)). Furthermore, section 12(a)(2)(G) (7 U.S.C. §136j(a)(2)(G)) only makes it a violation of FIFRA for any person to "use any *registered* pesticide in a manner inconsistent with its labeling" (emphasis added). There is no provision that requires that unregistered pesticides (including formerly-registered pesticides) be used according to their labels. Thus, in the absence of EPA

action, users of unregistered pesticides are not obligated to follow the labeling (which, for registered pesticides, prescribes enforceable conditions for using the particular pesticide, among other things) accompanying the product. Therefore, because these registrations are vacated, unless EPA takes action, persons holding stocks of these dicamba products would not be legally precluded from using those stocks without following label directions, including the restrictions intended to reduce off-target movement.

FIFRA authorizes EPA to issue enforceable orders governing the sale, distribution, and use of existing stocks of cancelled pesticides. Specifically, section 6(a)(l) of FIFRA (7 U.S.C. §136d(a)(l)) provides that: "The Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is suspended or canceled under [sections 3, 4 or 6 of FIFRA] to such extent, under such conditions, and for such uses as the Administrator determines that such sale or use is not inconsistent with the purposes of [FIFRA]." Section 12(a)(2)(K) of FIFRA (7 U.S.C. §136j(a)(2)(K)) makes the failure to comply with a cancellation order enforceable under FIFRA. When EPA cancels a registration, EPA issues a cancellation order establishing enforceable terms and conditions for the disposition of existing stocks. Such orders can authorize sale or distribution that would otherwise be unlawful, and they can prohibit use that would otherwise be lawful. They can also contain limitations or conditions on the sale, distribution, or use that the Administrator determines to be appropriate. A limitation that EPA frequently applies to existing stocks is a condition that any authorization of use of such stocks is limited to use that is consistent with the previously-approved labeling accompanying the product.

The Xtendimax, Engenia, and FeXapan registrations were vacated by court order immediately, without any opportunity for a cancellation order to be issued by EPA. Nonetheless, the Agency believes that the Court's action in vacating the these dicamba registrations has been consistently viewed under FIFRA as equivalent to the cancellation of those registrations under FIFRA section 3 (7 U.S.C. §136a) (including any additional uses authorized under section 24(c) (7 U.S.C. §136v(c) of FIFRA), because the vacatur is based upon the lack of substantial evidence to support the registration under section 3 of FIFRA. EPA followed this same approach when registrations of sulfoxaflor were vacated by the United States Court of Appeals for the Ninth Circuit in 2015, and when registrations of spirotetramat were vacated by the U.S. District Court for the Southern District of New York in 2010. *See* Sulfoxaflor Final Cancellation Order (Nov. 12, 2015) https://www.epa.gov/sites/production/files/2015-11/documents/final_cancellation_order-sulfoxaflor.pdf; Spirotetramat Final Cancellation Order (April 5, 2010) https://archive.epa.gov/epa/sites/production/files/2015-10/documents/spirotetramat-final-cancel-order-04-05-10.pdf. *See also* Termilind Limited; Notice and Order of Revocation of Registrations, 62 Fed. Reg. 61890 (Nov. 19, 1997).[2]

[2] In similar situations, the Agency has considered proceeding via Stop Sale, Use, and Removal Order (SSURO) rather than a cancellation order but rejected this course of action. Section 136k(a) requires SSUROs to be " issued…to any person who owns, controls, or has custody" of the pesticide that is subject to the order and the order is effective as to that person only "after [the person] recei[ves] . . . that order." EPA interprets this language to require personal delivery to each such person. For such a widely used pesticide products such as these dicamba products,

In sum, EPA is using this cancellation order by virtue of its authority under FIFRA to establish provisions for the disposition of existing stocks of registrations found to be invalid. The Agency is therefore issuing this cancellation order under FIFRA section 3 and an existing stocks order under section 6 (7 U.S.C. §§136a and 136d).

Existing Stocks Determination

EPA issued in 1991 a policy statement outlining the considerations it generally applies in determining how to treat existing stocks in cancellation orders. *See* 56 Fed. Reg. 29362 (June 26, 1991). In general, if no significant risk concerns have been identified for a cancelled product, such as when a product is voluntarily cancelled, the policy statement suggests that the Agency will generally allow unlimited use of existing stocks, and unlimited sale by persons other than the registrant. A registrant will generally be allowed to continue to sell existing stocks for one year after the date cancellation is requested, or one year after the date the registrant has ceased to comply with the responsibilities that are placed upon registrants, whichever date is sooner. 56 Fed. Reg. at 29362, 29367.

If there are significant risk concerns associated with a cancelled pesticide, the policy statement states that the Agency will generally make a case-by-case determination as to whether to allow the continued sale or use of existing stocks of the pesticide. That determination, like the initial decision to register a pesticide, will focus on the social, economic, and environmental risks and benefits associated with such sale and use. But while the registration decision focuses almost exclusively on the risks and benefits associated with the use of the pesticide, the existing stocks determination is importantly different because it addresses finite and diminishing quantities of product already manufactured and in many cases widely distributed among persons unknown. Thus, EPA identified in the policy statement six factors it might consider in making such risk-benefit decisions, including: 1) the quantity of existing stocks at each level of the channels of trade; 2) the risks resulting from the use of the existing stocks; 3) the benefits resulting from the use of such stocks; 4) the financial expenditures users and others have already spent on existing stocks; 5) the risks and costs of disposal or alternative disposition of the stocks; and 6) the practicality of implementing restrictions on distribution, sale, or use of the existing stocks. 56 Fed. Reg. at 29364.

In considering how to apply the policy to these dicamba products, EPA recognizes that the immediate nature of the United States Court of Appeals for the Ninth Circuit's vacatur must be considered as well as the standard six factors it generally considers in regard to sale, distribution and use of existing stocks. These dicamba products' registrations were immediately vacated by judicial action where the Court found the registrations were not supported by substantial evidence. The Court vacated those registrations on the view that EPA substantially understated risks that it acknowledged and failed to acknowledge other risks. In light of the Court's reasoning for its vacatur, EPA is substantially restricting sale and distribution of existing stocks of these dicamba products. Even considering the immediate vacatur along with

---

personal delivery would present enormous practical difficulties for EPA to ascertain the names and addresses of all such persons (including all end-users) and issue SSUROs to them, which the Agency does not believe is warranted in the instant circumstance.

consideration of the six factors identified in the 1991 Existing Stocks Policy, EPA concludes that distribution and use in certain narrow circumstances is supported.

As for more limited sale, distribution and use, EPA is taking into consideration the implications of the immediate vacatur on the country's agricultural industry. It is clear from the numerous unsolicited phone calls and emails that EPA has received since the issuance of the Court's decision, there is a real concern and potential for devastation to cotton and soybean crops that could result in a crisis for the industry.

U.S. Secretary of Agriculture Sonny Perdue commented on the importance and value of this tool: "Farmers across America have spent hard earned money on previously allowed crop protection tools. I encourage the EPA to use any available flexibilities to allow the continued use of already purchased dicamba products, which are a critical tool for American farmers to combat weeds resistant to many other herbicides, in fields that are already planted." June 4, 2020 (*See* https://www.usda.gov/media/press-releases/2020/06/04/secretary-perdue-statement-ninth-circuit-dicamba-decision)

The following is EPA's assessment of the factors typically considered in issuing an existing stocks order:

1) Quantities of existing stocks at each level of the channels of trade

There is ample evidence that existing stocks are present in growers' possession and throughout the channels of trade, and that the quantities are substantial as this is the height of the growing season. EPA has not yet been able to determine the exact quantities of existing stocks at each level of the channels of trade. From the information provided to EPA so far, it is our estimate that approximately 4 million gallons could be in the channels of trade. As articulated in a June 5, 2020 letter from the Agricultural Retailers Association stated:

> The immediate nature of the decision and mandate has already created chaos in our industry. No apparent thought or concern was given to practical supply chain realities or availability of alternative products at the last minute. The Court made no estimate of the damage and cost that would be inflicted on growers' ability to control weeds, the investments they had already made to that end, production plans of manufacturers to prepare for that demand, or the cost and inventory impacts to agricultural retailers and distributors.

2) The risks resulting from the use of the existing stocks

Even though the court found that the labels were difficult to follow, there is no dispute that use inconsistent with the labeling formerly approved by EPA would have greater potential to cause unreasonable adverse effects on the environment including to endangered species. Therefore, it is imperative that EPA issue this order and require that any use of these dicamba products moving forward is consistent with the previously approved labeling and can be enforced as such in order to prevent unreasonable adverse effects on the environment.

3) The benefits resulting from the use of existing stocks

The uses authorized by the Xtendimax, Engenia, and FeXapan registrations include many uses other than post-emergent use on dicamba-resistant soybeans and cotton.[3] Those uses do not present the same risks as the uses that were the basis for the Court's decision. These products continue to offer valuable benefits to users for these other previously-approved uses, and allowing these non-over-the-top uses provides substantially greater benefits to users and to society than disposal.

In regard to the post-emergent use on dicamba-tolerant crops, EPA has received numerous phone calls and emails since the Court's order concerning how essential these products are, and especially so as the growing season is underway. The Agency has considered the correspondence received to date and finds that the benefits resulting from the use of the products are considerable and well established, particularly for this growing season.

The following is an excerpt from a June 5, 2020 letter to EPA from BASF stating the following:

> As you are aware, US farmers have planted their crops and are now in the process of applying herbicide products to control weeds that if not controlled can have a devastating impact on both yield and quality. Specifically, Dicamba [over-the-top] products are specifically intended to control herbicide resistant weeds such as pigweed (*Palmer amaranth*) and marestail (*Conyza canadensis*) that are well known to have crippling financial impact on growers if not properly controlled. Our agricultural community is already suffering great economic hardship and significant uncertainty.

The American Farm Bureau Federation stated in a letter received by EPA on June 5, 2020 that farmers unable to use these dicamba products would be "abruptly expos[ed] to potentially billions of dollars in noxious weed damage."

In a June 7, 2020 letter to EPA, the National Cotton Council of America provided the Agency with the following information relating to the benefits its members achieve from the use of these products. More specifically they noted the following:

> RoundUp will be applied as well but that product will not control the RoundUp-resistant pigweed that can be controlled by dicamba. Control of resistant pigweed in some areas may have to be done manually at this stage, adding to the costs. Labor necessary for manual weed control is difficult to find, and even with available labor, effective control requires the chopping of large stalks and hauling the weeds from the field. Costs estimates run from at least $20 per acre to as much as $60 per acre if the labor is available.

---

[3] Other uses permitted under the previously-approved labels include weed control in asparagus, conservation reserve programs, corn, fallow croplands, sorghum, grass grown for seed, hay, proso millet, pasture, rangeland, small grains, sod farms, and sugarcane.

> Pigweed that is resistant to RoundUp threatens the ability to farm in regions across the Cotton Belt. The fast growth of the plant, the production of about 700,000 seeds per plant, the height and density of the plants in fields without control, the costs and lack of availability of crews to hoe and remove the plants from fields, combined with the overwhelming seedbank already present would overwhelm the small profit level of production while steadily decreasing yield. The present state of crop production requires a small window of opportunity for a series of actions that must be completed on a timely basis. Pre-plant burndown, at-planting residuals, and post-planting over-the-top applications are required to achieve effective weed management. The few herbicide Modes of Action (MOA) viable for today's weed management are at risk due to resistance development. The loss of dicamba will result in a loss of herbicide control due to the lack of a MOA that forces overuse of the remaining MOAs.

4) The financial expenditures users and others have already spent on existing stocks

Farmers and commercial applicators have already made substantial financial expenditures in reliance on the registration of dicamba products for post-emergent use. The costs to farmers are not limited to their existing stocks of these dicamba products, but include other sunk costs made in expectation of the availability of these products (seed purchase, tilling, planting, etc.) as well as the lost opportunity to switch to a different crop or to another herbicide or weed management method. For example, in a June 5, 2020 letter, the American Soybean Association stated that growers have spent hundreds of millions of dollars on legally purchased product. They state that growers "stand to have their operations devastated . . . suffering doubly . . . First, through their investment of hundreds of millions of dollars in product which they may no longer be able to legally use; and secondly, through the potentially-billions of dollars in exposure to damaging weed – that may have few or no other treatment options."

In a letter received on June 5, 2020 by EPA, the American Farm Bureau Federation stated that farmers have often take out loans to cover the expenses:

> Many farmers have already made planting decisions to use dicamba tolerant crop systems and planned to use dicamba products in the very near future. These farmers invested substantial sums in the dicamba-resistant seeds in reliance on EPA's approval of dicamba on these crops. Without these products, not only are these substantial investments at risk, but farmers do not know how they will protect their crops.

In addition to already sunken costs into these dicamba products and the associated seed, the Southern Farm Bureau stated the "our farmers are dealing with ongoing adversities related to unstable markets and impacts from COVID-19." The expense of finding other weed management options would be exacerbated by difficulty of finding labor for hand weeding due to the COVID-19 pandemic.

EPA also received a letter from the Agricultural Retailers Association (ARA). This organization represents the interests of agricultural retailers and distributors across the United States. In its letter, ARA stated that the "retailers and growers will be scrambling to secure alternatives from insufficient supplied which will result in higher prices and even possible hoarding." ARA further noted the following:

> Many farmers had made plans to use over-the-top (OTT) application of dicamba to control post-emergent weeds, so manufacturers planned accordingly, and retailers stocked inventory in preparation for those applications. Growers invested in seed that is dicamba tolerant as part of this system. Now the retailers are stuck with warehouses of unusable product and there will likely not be sufficient supplies of alternate products available. Growers are now without options at the worst possible time in their production year. Those alternatives may not have even been manufactured, and what supply does exist is certainly not positioned in the supply chain for immediate use.

Additionally, EPA received a letter from the National Farmers Union expressing "the need for immediate guidance for America's family farmers on the use of Dicamba. It is planting season for many farmers who invested in Dicamba-resistant crops, and loosing [sic] access to these chemical formulations may pose risks to their crops."

On June 7, 2020, EPA received a letter from the National Cotton Council of America concerning the economic hardships created by the Court's order. Specifically, it stated:

> U.S. cotton farmers, preliminary analysis estimates that the direct loss in value of production totals approximately $400 million. The direct economic impact is based on USDA's current 2020 planted area estimate of 13.475 million acres of upland cotton. The analysis removes 590,000 cotton acres planted in Arkansas since the court decision came after the state-enforced cut-off date for dicamba applications. In addition, 45,000 acres of upland cotton planted in California are also not affected by the decision since there was no approval for use of dicamba in that state."
>
> Of the 12.840 million acres planted in the remaining 15 Cotton Belt states, it is estimated that approximately 75% of those acres are planted to dicamba-tolerant varieties. The 75% adoption rate reflects the recent trends from USDA's Cotton Varieties Planted report. Of the 9.630 million acres of dicamba-tolerant varieties, the baseline assumption is that 20% of those acres (or 1.926 million acres) could be susceptible to significant yield losses due to increased weed pressures. Research conducted prior to availability of dicamba-tolerant varieties reported a minimum 50% yield-loss in fields with resistant palmer amaranth (pigweed). Using a U.S. average yield of 730 pounds per planted acre, the yield decline on the impacted acres is 365 pounds, which translates into $208 of lost revenue based on USDA's projected cotton price of $0.57 per pound. That lost revenue on the impacted acres totals $401 million.

> Given the prevalence of RoundUp (glyphosate)-resistant pigweed, it is important to understand the risks to U.S. cotton production. If as many of 40% of the dicamba tolerant acres suffer a 50% yield loss, the lost revenue reaches $800 million.
>
> In addition to the revenue losses, cotton farmers face the additional costs of switching to another herbicide product. An initial analysis suggests that switching to Liberty (glufosinate) leads to an increase of $5.00/acre but without a 100% control of pigweed. Liberty is an alternative but less effective and not as reliable as the labeled dicamba. With cool temperatures at planting in some areas, the product does not provide effective control. Additionally, with larger pigweed plants, the control provided by Liberty decreases and becomes more erratic. Liberty is an important tool but not as the only choice. The continued availability of dicamba is imperative to avoid the loss of Liberty due to resistance development. In addition, it will take multiple applications to achieve good control provided by dicamba. If done by a custom applicator, an initial cost estimate is $7 to $10 per acre for the applicator.
>
> The economic damage caused associated with the vacatur of these dicamba products exacerbates an already tenuous economic situation for cotton farmers who are already facing depressed market prices due to ongoing trade tensions and the COVID-19 pandemic. Rural economies across the Coton Belt are reliant on the direct and downstream economic benefits of a healthy cotton economy. Without access to these dicamba products, the farms and businesses directly involved in the production, distribution and processing of cotton will be jeopardized. These farms and businesses employ more than 125,000 workers and produce direct business revenue of more than $21 billion.

The National Soybean Association further noted, "U.S. growers could suffer doubly from this ruling: first, through their investment of hundreds of millions of dollars in product which they may no longer be able to legally use; and secondly, through the potentially-billions of dollars in exposure to damaging weeds – that may have few or no other treatment options – they will now have to manage differently."

Finally, prohibiting use, as opposed to allowing limited use in accordance with label restrictions, would be particularly inequitable to users who purchased the dicamba products for uses other than the post-emergent use on dicamba-tolerant crops that was the basis for the Court's decision. Because the other uses do not present the same risks as the post-emergent use on dicamba-tolerant crops, there is no reason to prohibit these uses.

5) The risks and costs of disposal or alternative disposition of the stocks

Disposal entails substantial costs for management and transportation, as well as the disposal itself. Existing stocks held by dealers are likely to be intact, except for bulk containers. But disposal or return of product already in end users' hands may be neither feasible nor advisable. For example, users may possess containers of these dicamba product that have already

been opened and transporting them can create a greater risk of spillage. Opened containers also create additional burden when sent for disposal because proper disposal may require that the content be verified, adding additional expense. While some states provide programs for the free disposal of pesticides, such programs only shift the expense to states rather than users.

6) The practicality of implementing restrictions on distribution, sale, or use of the existing stocks

Tracking existing stocks held by pesticide dealers may be feasible, although likely to be imperfect. Tracking existing stocks held by end users is significantly more burdensome and far less accurate. Hard-pressed farmers who have made large investments in their existing stocks may be uncooperative with a cancellation order that requires disposal. Finally, as a general matter, EPA believes it a mistake to issue restrictions on existing stocks unless the holders of stocks are notified of the restrictions and are likely to comply with them. While EPA believes it likely that most pesticide dealers who hold existing stocks of Xtendimax, Engenia, and FeXapan, will learn of the restrictions on sale and distribution through this cancellation order, it is less likely that users who already hold existing stocks will be aware. It would be highly impractical to ensure that all users are notified and such notification would entail the devotion of significant governmental resources. EPA expects that users that are unaware of this cancellation order will continue to use the products consistent with their labeling because that is their regular practice when using pesticides. However, the immediate vacatur of the registration leaves EPA unable to enforce against use inconsistent with the labeling. EPA believes it is important to restore regulation of ongoing use as quickly as possible and individual notification to users would take significant time. Therefore, EPA has concluded that issuing individual stop sale, use and removal orders ("SSUROs") to all end users holding these dicamba products is unwarranted under the present facts.

Regarding the sale and distribution of existing stocks for disposal and return, EPA has taken these factors into account. To facilitate an orderly wind-down of these dicamba products EPA is allowing pesticide dealers end users who hold existing stocks to return them to the registrant or dispose of them in accordance with federal, state and local waste disposal requirements. A contrary interpretation of the vacatur order would mean that those existing stocks would be immovable in perpetuity in slowly deteriorating containers. Therefore, this cancellation order allows for distribution of all existing stocks for the purposes of return to the registrant or disposal, subject to conditions specified below.

EPA's decision regarding use of existing stocks of Xtendimax, Engenia, and FeXapan (and certain limited sales and distributions closely related to such use) takes into consideration the six factors identified in the 1991 existing stocks policy. Each of the six factors weighs heavily in support of allowing end users to use existing stocks of these dicamba products that are in their possession. But, to further reduce the potential for adverse effects, EPA is imposing a July 31, 2020 cut-off date for use of existing stocks.

EPA is aware that farmers may in some cases have purchased these dicamba products, which are restricted use pesticides (RUPs), and had them delivered to their farm for subsequent application by a commercial applicator. Commercial applicators themselves may have already

purchased these dicamba products in order to provide a service of applying them to farmers' crops in the upcoming weeks. Given the substantial financial expenditure already made in these situations along with the other factors discussed above, EPA considers it appropriate to allow 1) existing stocks of these dicamba products in the hands of users to be used until July 31, 2020 and 2) for existing stocks of these dicamba products in the hands of commercial applicators to be used until July 31, 2020 (including moved as necessary for such use, regardless of whether the movement is sale or distribution), both subject to conditions specified below.

Final Cancellation Order, Including Provisions for Existing Stocks

1. Pursuant to sections 3 and 6 of FIFRA, EPA hereby issues a final cancellation order for the dicamba registrations listed below. Any distribution, sale, or use of these products in a manner inconsistent with this order, including the provisions below regarding the disposition of existing stocks, will be considered a violation of section 12(a)(2)(K) and/or 12(a)(l)(A) of FIFRA. This order will remain in effect unless and until it is amended or withdrawn. The issuance of this order did not follow a public hearing. This is a final agency action, judicially reviewable under FIFRA 16(a) (7 U.S.C. §136n).

2. Existing Stocks. For purposes of this order, the term "existing stocks" is defined, consistent with EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of the formerly registered pesticide products listed below which are currently in the United States and which were packaged, labeled, and released for shipment prior to the time of the order on June 3, 2020 effective date of the vacatur of the affected registrations. Pursuant to section 6(a)(1) of FIFRA, this cancellation order provides as follows:

a. *Distribution or sale by the registrant*. Distribution or sale by the registrant of all existing stocks of the products listed below is prohibited effective as of the time of the order on June 3, except for distribution for the purposes of proper disposal.

b. *Distribution or sale by persons other than the registrant*. Distribution or sale of existing stocks of the products listed below that are already in the possession of persons other than the registrant is permitted only for the purposes of proper disposal or to facilitate return to the registrant or a registered establishment under contract with the registrant, unless otherwise allowed below.

c. *Distribution or sale by commercial applicators*. For the purpose of facilitating use no later than July 31, 2020, distribution or sale of existing stocks of products listed below that are in the possession of commercial applicators is permitted.

d. *Use*. Use of existing stocks of products listed below inconsistent in any respect with the previously-approved labeling accompanying the product is prohibited. All use is prohibited after July 31, 2020.

3. List of Cancelled Products

| Registrant | Product | Registration Number |
|---|---|---|
| Bayer | Xtendimax with Vaporgrip Technology | EPA Reg. No. 524-617 |
| BASF | Engenia | EPA Reg. No. 7969-345 |
| Corteva | FeXapan | EPA Reg. No. 352-913 |

Andrew R. Wheeler
Administrator
United States Environmental Protection Agency

Date

JUN 0 8 2020