

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN SOYBEAN ASSOCIATION,

Petitioner,

vs.

MICHAEL S. REGAN, Administrator,
U.S. Environmental Protection Agency,

and

MARIETTA ECHEVERRIA, Acting
Division Director, U.S. Environmental
Protection Agency, Office of Pesticide
Programs, Registration Division,

and

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondents.

Case No. 22-1048

PETITION FOR REVIEW

Under Federal Rule of Appellate Procedure 15, D.C. Circuit Rule 15, 7 U.S.C. § 136n(b), 5 U.S.C. § 706, and 16 U.S.C. § 1536, Petitioner American Soybean Association hereby petitions this Court for review of the final actions amending registrations of certain dicamba herbicide products (the “Registration Amendments”) taken by the United States Environmental Protection Agency

(“EPA”) on March 15, 2022.¹ EPA published the Registration Amendments to the Federal Docket Management System (Regulations.gov) under docket number EPA-HQ-OPP-2020-0492. The Registration Amendments include limited (but more stringent) product use restrictions, applicable to farmers in Minnesota and Iowa, on top of those already imposed by dicamba product registrations issued by EPA on October 27, 2020, titled: the Engenia Herbicide Registration (the “Engenia Registration,” a true and correct copy of which is attached as **Exhibit D**), the A21472 Plus VaporGrip Technology Registration (the “Tavium Registration,” a true and correct copy of which is attached as **Exhibit E**), and the XtendiMax with VaporGrip Technology Registration (the “Xtendimax Registration,” a true and correct copy of which is attached as **Exhibit F**) (collectively the “Original Registrations”).²

¹ True and correct copies of the Registration Amendments are attached hereto as **Exhibit A** (“Engenia Registration Amendment”), **Exhibit B** (“Tavium Registration Amendment”), and **Exhibit C** (“XtendiMax Registration Amendment”).

² EPA supported these registrations with several analysis and decision documents: Memorandum Supporting Decision to Approve Registration for the Uses of Dicamba on Dicamba Tolerant Cotton and Soybean (the “Dicamba Memorandum,” a true and correct copy of which is attached as **Exhibit G**); Dicamba Use on Genetically Modified Dicamba-Tolerant (DT) Cotton and Soybean: Incidents and Impacts to Users and Non-Users from Proposed Registrations (the “Incidents and Impacts Report,” a true and correct copy of which is attached as **Exhibit H**); Consideration of Newly Submitted Mutagenicity Data and Human Health Risk Assessment Summary (the “HRA Report,” a true and correct copy of which is attached as **Exhibit I**); Dicamba DGA and BAPMA Salts – 2020 Ecological Assessment of Dicamba Use on Dicamba-Tolerant (DT) Cotton and Soybean Including Effects Determinations for Federally Listed Threatened and Endangered Species (the “ESA Assessment,” a true and correct copy of which is attached as **Exhibit J**); Assessment of the Benefits of Dicamba Use in Genetically Modified, Dicamba-Tolerant Cotton Production (the “Cotton Benefits Assessment,” a true and correct copy of which is attached as **Exhibit K**); and Assessment of the Benefits of Dicamba Use in Genetically Modified, Dicamba-Tolerant Soybean Production (the “Soybean Benefits Assessment,” a true and correct copy of which is attached as **Exhibit L**).

This is a protective petition. Petitioner believes that the challenged decisions are “judicially reviewable by the district courts of the United States,” rather than this Court, as the decisions did “not follow[] a hearing and [are] final action[s] of the [EPA] Administrator not committed to the discretion of the Administrator.” 7 U.S.C. § 136n(a). As noted above, the Registration Amendments add new product-use restrictions in two states. Because FIFRA requires that challenges “to the validity of any order issued by the Administrator following a public hearing” be brought within sixty days, Petitioner submits this separate petition protectively, out of an abundance of caution, to preserve its claims as to the Registration Amendments. 7 U.S.C. § 136n(b).

Petitioner also filed initial protective Petitions for Review in this Court challenging the Original Registrations on November 5, 2020, *see Am. Soybean Ass’n v. EPA, et al.*, No. 20-1441 (D.C. Cir.), and November 10, 2020, *see Am. Soybean Ass’n v. EPA, et al.*, No. 20-1445 (D.C. Cir.). Those actions were consolidated and are currently pending in this Court, with briefing schedules in place.³ *See Am.*

³ Petitioner American Soybean Association and Plains Cotton Growers have filed a single district court challenge to the Original Registrations in the United States District Court for the District of Columbia. *See Am. Soybean Ass’n, et al. v. EPA, et al.*, No. 20-cv-03190 (D.D.C.). Plains Cotton Growers also filed an earlier protective petition challenging the October 27, 2020 registrations in the United States Court of Appeals for the Fifth Circuit, where it “resides or has a place of business,” *see* 7 U.S.C. § 136n(b). That action was subsequently transferred to this Court, *see Plains Cotton Growers, Inc. v. EPA, et al.*, No. 20-1484 (D.C. Cir.), and was consolidated with Petitioner American Soybean Association’s case, *see American Soybean Ass’n, et al. v. EPA, et al.*, No. 20-1441 (D.C. Cir.). Petitioners’ action in the United States District Court for the District of Columbia is stayed pending the outcome of Petitioners’ case in the D.C. Circuit. Petitioners

Soybean Ass'n, No. 20-1441. Petitioner plans to file a motion to amend its earlier petitions to address the Registration Amendments and file a motion to modify the existing briefing schedule. Because its petitions challenging the Original Registrations and Registration Amendments involve common questions of fact and law, Petitioner requests that these matters be consolidated.

Petitioner submits that the Registration Amendments violate the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), Endangered Species Act (“ESA”), and Administrative Procedures Act (“APA”) by imposing registration conditions that exceed statutory authority, are arbitrary and capricious, are an abuse of discretion, are not supported by substantial evidence when considered on the record as a whole, and are not otherwise in accordance with the law. *See, e.g.*, 7 U.S.C. §§ 136(a), 136n(b); 5 U.S.C. § 706; 16 U.S.C. § 1536. Thus, Petitioner respectfully requests that this Court, if necessary, hold those registration conditions unlawful, remand the Registration Amendments, and supporting analysis and decision documents to Respondents without vacatur, hold the remainder of the Registration Amendments, and the supporting analyses and decision documents lawful, award Petitioner its costs and reasonable attorneys’ fees, and grant such further relief as may be just and proper.

intend to seek leave to amend their district court complaint to challenge the Registration Amendments at issue in this petition.

Dated: March 24, 2022

Respectfully submitted,

/s/ Edmund S. Sauer

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RULE 26.1 DISCLOSURE STATEMENT

Under Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Petitioner makes the following disclosures:

Petitioner American Soybean Association has no parent companies and no publicly held company holds ten percent or greater ownership interest in the American Soybean Association.

The American Soybean Association, a corporation organized and existing under the laws of the State of Missouri, is a national non-profit trade association representing U.S. soybean growers on domestic and international issues of importance to the American soybean industry.

Dated: March 24, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Petition for Review and Rule 26.1 Disclosure Statement on Respondents through First Class U.S. Mail, return receipt requested, to each of the following addresses on this 24th day of March 2022.

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