



OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION

WASHINGTON, D.C. 20460

February 14, 2024

Subject: Existing Stocks Order for Dicamba Products Previously Registered for Over-the-Top Use on Dicamba-Tolerant Cotton and Soybean

Product Names: XtendiMax® with VaporGrip® Technology
Engenia® Herbicide
A21472 Plus VaporGrip® Technology (Tavium® Plus VaporGrip® Technology)

Registration Nos.: 264-1210
7969-472
100-1623

Summary

This existing stocks order serves as EPA’s notice to all registrants, sellers, distributors, and users of XtendiMax® with VaporGrip® Technology (EPA Reg. No. 264-1210) (“XtendiMax”), Engenia® Herbicide (EPA Reg. No. 7969-472) (“Engenia”), and A21472 Plus VaporGrip® Technology (Tavium® Plus VaporGrip® Technology) (EPA Reg. No. 100-1623) (“Tavium”) of the District of Arizona’s order and judgment in *Center for Biological Diversity et al. v. EPA*, Case No. CV-20-00555-TUC-DCB, vacating the registrations for these products. Therefore, as of **February 6, 2024**, the date of the District of Arizona’s order and judgment, these products are no longer registered and it is unlawful under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to sell or distribute them except to the extent otherwise authorized by EPA.¹

This order contains EPA’s provisions for the disposition of any existing stocks of these formerly-registered products. “Existing stocks” means those stocks of previously registered pesticide products that are currently in the United States and were packaged, labeled, and released for

¹ FIFRA prohibits the sale and distribution of unregistered pesticides except as otherwise authorized by EPA. 7 U.S.C. § 136j(a)(1)(A). There remains one dicamba product that was not subject to the court’s order and therefore remains registered for post-emergent use on dicamba-tolerant soybean and cotton: FeXapan® Plus VaporGrip® Technology (EPA Reg. No. 352-938) (“FeXapan”). Corteva, the registrant for FeXapan, ceased selling this product in 2021. See DuPont™ FeXapan® Herbicide Plus VaporGrip® Technology, Corteva Agriscience (Feb. 22, 2021), <https://www.corteva.us/products-and-solutions/crop-protection/fexapan.html>. EPA has confirmed with Corteva that they are not selling or distributing FeXapan.

shipment prior to **February 6, 2024**. A product has been released for shipment when the producer has packaged and labeled it in the manner in which it will be distributed or sold, or has stored it in an area where finished products are ordinarily held for shipment. 40 C.F.R. § 152.3. Under the provisions of the District of Arizona’s order, as of **February 6, 2024**, it is unlawful for the registrants—Bayer CropScience LP, BASF, and Syngenta Crop Protection, LLC—to sell or distribute these products except for the purposes of proper disposal or lawful export. In light of the court’s order, EPA is issuing this existing stocks order to authorize limited sale and distribution of existing stocks that are already in the possession of persons other than the registrant. Further, under this order, end users of existing stocks must use the formerly-registered products consistent with the previously approved labeling for the products, and must cease use of these products by the relevant date identified in **Table 1**. Additional details regarding the sale, distribution, and use of these products pursuant to this order are provided below in the section titled “EPA’s Order for the Disposition of Existing Stocks.”

Background

Dicamba was first registered for use on dicamba-tolerant cotton and soybean in 2016. In June 2020, the 9th Circuit Court of Appeals vacated the registrations of three dicamba products registered for use on dicamba-tolerant cotton and soybean: XtendiMax, Engenia, and FeXapan. *National Family Farm Coalition v. EPA*, 960 F.3d 1120 (9th Cir.). Following the vacatur, in July 2020, Bayer CropScience LP and BASF submitted applications to register new XtendiMax and Engenia products, respectively, for use on dicamba-tolerant cotton and soybean. Shortly thereafter, Syngenta Crop Protection, LLC submitted an application to extend its registration of Tavium, which was not vacated by the 9th Circuit and was set to expire in December 2020. On October 27, 2020, EPA granted the applications for registrations and registration amendment and established an expiration date of December 20, 2025 for all three registrations.

Challenge to EPA’s Issuance of the 2020 Dicamba Registrations

On December 23, 2020, Center for Biological Diversity, Center for Food Safety, National Family Farm Coalition, and Pesticide Action Network North America filed a complaint in the District of Arizona challenging EPA’s approval of the registrations of XtendiMax and Engenia and of the registration amendment for Tavium. On February 6, 2024, the court issued an order and judgment vacating the registrations for XtendiMax, Engenia, and Tavium. The vacatur of these registrations became effective on February 6, 2024. Accordingly, as of that date, these products are unregistered and sale or distribution of these products is unlawful, except as described below in the section titled “EPA’s Order for the Disposition of Existing Stocks.”²

Statutory Background

Under FIFRA section 3, generally a pesticide product must be registered with EPA before it may be sold or distributed in commerce.³ EPA may not register a pesticide unless, among other things, it first determines that the product and its use will not cause unreasonable adverse effects on the

² See FIFRA § 3(a), 7 U.S.C. § 136a(a); FIFRA § 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A).

³ FIFRA § 3(a), 7 U.S.C. § 136a(a).

environment.⁴ Once a pesticide product is registered, FIFRA requires the product not be used inconsistent with its labeling.⁵ If a pesticide product is cancelled by EPA or vacated by a court, the pesticide is no longer registered and use consistent with the previously approved labeling is no longer controlled under FIFRA unless EPA issues an existing stocks order pursuant to FIFRA section 6(a), which 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].”⁶

This provision of FIFRA allows EPA to issue orders governing the sale, distribution, and use of existing stocks for a pesticide that has been sold with the imprimatur of a registration where that registration is cancelled.⁷ Existing stocks orders can authorize sale or distribution that would otherwise be unlawful and prohibit use that would otherwise be lawful. They can also contain limitations or conditions on the sale, distribution, or use that EPA determines are appropriate to ensure that the sale, distribution and use is not inconsistent with the purposes of FIFRA. A common example is limiting use of existing stocks to use that is consistent with the previously approved labeling accompanying the product.

In determining whether sale or use in any particular situation is consistent with the purposes of FIFRA, EPA is very mindful of the theme running through FIFRA that the Agency must not allow pesticides to cause unreasonable adverse effects on the environment (defined as an unreasonable risk to man or the environment). But EPA is also mindful of FIFRA’s dictate that EPA consider effects on society, including any unnecessary economic burdens upon pesticide users or distributors when developing any existing stocks order.

In 1991, EPA issued a policy statement outlining its general considerations for treatment of existing stocks.⁸ In some cases, for example voluntary cancellations, EPA generally will allow unlimited use of existing stocks and unlimited sale and distribution of existing stocks by persons other than the registrant(s), while the registrants are allowed sale and distribution for a year.⁹ In other cases, including where a registration has been vacated by a court, EPA generally will make a case-by-case determination as to whether and how to allow continued sale, distribution, or use of existing stocks based on a risk-benefit determination associated with the existing stocks, considering (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 existing 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 existing stocks, and (6) the practicality of implementing restrictions on distribution, sale, or use of the existing stocks.¹⁰

⁴ FIFRA § 3(c)(5), 7 U.S.C. § 136a(c)(5).

⁵ FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G).

⁶ FIFRA § 6(a)(1), 7 U.S.C. § 136d(a)(1).

⁷ FIFRA § 6(a)(1), 7 U.S.C. § 136d(a)(1) (“[EPA] may permit the continued sale and use of existing stocks of a pesticide whose registration is suspended or canceled under [FIFRA sections 3, 4, or 6] to such extent, under such conditions, and for such uses as [EPA] determines that such sale or use is not inconsistent with the purposes of [FIFRA].”).

⁸ See 56 Fed. Reg. 29,362 (June 26, 1991).

⁹ *Id.* at 29,367.

¹⁰ *Id.* at 29,364.

“EPA will generally select the most restrictive existing stocks provision that may apply,” considering whether the distribution, sale, and use of existing stocks is consistent with the purposes of FIFRA.¹¹ EPA may amend an existing stocks provision “on its own initiative or at the request of any interested person,” for example to allow for additional time to sell or use stocks or to place additional restrictions on the sale or use of existing stocks, if later circumstances warrant.¹² “Finally, unless an existing stocks provision stipulates otherwise, any sale or use of existing stocks must be in accordance with the previously approved label and labeling on, or accompanying, the product.”¹³

Application of EPA’s Existing Stocks Authority

This existing stocks order is limited in time and scope, and includes restrictions to allow for the distribution, sale, and use that are intended to avoid environmental harm that could occur if not for this order. Therefore, for the reasons described below, EPA has determined that this existing stocks order is not inconsistent with the purposes of FIFRA.

The District of Arizona has vacated the registrations of XtendiMax, Engenia, and Tavium, holding that EPA “violated FIFRA notice and comment mandates” under FIFRA section 3(c)(4) (7 U.S.C. § 136a(c)(4)). Order at 1, *Center for Biological Diversity et al. v. EPA*, Case No. 20-00555-TUC-DCB (D. Ariz. Feb. 6, 2024) (“Court Order”). Although vacatur is not a cancellation order issued by EPA, the Agency believes that the court’s judgment vacating these registrations functions as a cancellation of these registrations under FIFRA section 3 insofar as it provides the predicate for EPA’s issuance of an existing stocks order. That the district court did not foreclose, or intend to foreclose, issuance of an existing stocks order in these circumstances is supported by the court’s recitation, without criticism, of EPA’s issuance of an existing stocks order “in response to vacatur of the 2016, as amended in 2018, OTT dicamba registrations.” Court Order at 45.

Here, EPA is issuing this order to allow appropriate distribution and to require proper use of existing stocks following the District of Arizona’s order. The court’s vacatur of the registrations of XtendiMax, Engenia, and Tavium results in two primary concerns for EPA. First, in the absence of any action by EPA, the court’s vacatur of these registrations would render **all** sale or distribution of the formerly-registered dicamba products unlawful under FIFRA and subject any person who does sell or distribute such products to potential civil or criminal penalties.¹⁴ FIFRA defines the term “distribute or sell” broadly and includes, among other things, any “shipment” of unregistered pesticides.¹⁵ Therefore, as of February 6, 2024, FIFRA would prohibit downstream distributors from even returning previously purchased product to the manufacturer for relabeling or shipment by any actor to disposal or export facilities. Among other things, an existing stocks order can permit those in possession of these products to distribute them for return to the manufacturer, export, or disposal.

¹¹ *Id.* at 29,363.

¹² *Id.* at 29,363-64.

¹³ *Id.* at 29,364.

¹⁴ See FIFRA § 12(a)(1)(A), 7 U.S.C. 136j(a)(1)(A); FIFRA § 14, 7 U.S.C. § 136l.

¹⁵ FIFRA § 2(gg), 7 U.S.C. § 136(gg).

Second, FIFRA does not prohibit the *use* of unregistered pesticides¹⁶ and only makes it a violation of FIFRA for any person “to use any **registered** pesticide in a manner inconsistent with its labeling.”¹⁷ Because the effect of the court’s order resulted in these products becoming unregistered, EPA is issuing this order to ensure that users apply dicamba following the restrictions on the previously approved labeling (including instructions intended to protect human health and the environment). By doing so, any use inconsistent with the previously approved labeling is prohibited, reducing the potential for harm to the environment from unrestricted use. The below provisions for the disposition of existing stocks address these concerns. Further, allowing the limited sale, distribution, and use of existing stocks will reduce the potential for offsite movement and protect human health and environment during the 2024 growing season by encouraging growers to apply the formerly-registered lower volatility dicamba formulations designed for use over the top of dicamba-tolerant soybean and cotton—rather than applying other dicamba products not registered for over-the-top use.

EPA also believes it appropriate to issue an existing stocks order because, as described in numerous stakeholder letters received by the Agency from across the country, growers have purchased dicamba-tolerant seed in the period between the completion of briefing in the District of Arizona case and the issuance of the court’s order and judgment vacating these dicamba registrations, therefore making them reliant on the availability of dicamba for over-the-top use. For example, a grower cannot use 2,4-D on dicamba-tolerant seed because it would harm the crop—2,4-D can only be used over the top of 2,4-D tolerant seed—and it is too late for growers to switch to 2,4-D tolerant seed. Additionally, distributors and end-users may have possession of stocks of XtendiMax, Engenia, and/or Tavium purchased in good faith after EPA issued the registrations permitting sale and distribution of the products in commerce and establishing conditions pertaining to the use of the products.

EPA also considered whether issuing a Stop Sale, Use, and Removal Order (SSURO) under FIFRA section 13 would be appropriate. EPA decided not to issue SSUROs for these products because SSUROs must be “issued . . . to any person who owns, controls, or has custody” of the pesticide that is subject to the order and are not effective until that person receives the SSURO.¹⁸ In other words, to use SSUROs would require EPA to ensure personal delivery to all such persons. Based on information provided to EPA by the registrants of the formerly-registered dicamba products, much of the volume of these products has left the possession of the registrants and entered the channels of trade. Thus, given the number of persons potentially in possession of these products—XtendiMax (EPA Reg. No. 264-1210), Engenia (EPA Reg. No. 7969-472), and Tavium (EPA Reg. No. 100-1623)—personal delivery would present enormous practical difficulties for EPA and potentially delay addressing the above noted concerns. Tracking existing stocks held by end users is significantly more burdensome and far less accurate. Accordingly, the Agency does not believe that it is appropriate to issue SSUROs at this time.

In sum, EPA believes using its authority under FIFRA to issue an order establishing provisions for the existing stocks of the formerly-registered dicamba products is “not inconsistent with the

¹⁶ See FIFRA § 12, 7 U.S.C. § 136j.

¹⁷ FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G) (emphasis added).

¹⁸ FIFRA § 13(a), 7 U.S.C. § 136k(a).

purposes” of FIFRA.¹⁹

Existing Stocks Determination

In considering how to apply the 1991 existing stocks policy to these vacated dicamba registrations, EPA recognizes that the immediate nature of the District of Arizona’s vacatur must be considered as well as the standard six factors the Agency generally considers in regard to sale, distribution, and use of existing stocks. These registrations were immediately vacated by judicial action where the court found that EPA’s approval of these registrations “violated FIFRA notice and comment mandates.” Court Order at 1. The court’s order did not prohibit or otherwise address EPA’s authority to issue an order under FIFRA section 6(a)(1) providing for the sale, distribution, or use of the dicamba products whose registrations it vacated.

The issuance of this existing stocks order will help to ensure that growers who have already purchased dicamba-tolerant seeds and thus are reliant on the availability of dicamba for the 2024 growing season: (1) apply dicamba formulations designed for use over the top of dicamba-tolerant soybean and cotton, rather than misusing more volatile dicamba formulations which could lead to greater offsite movement (and thus potential damage to non-dicamba tolerant crops and other plants); and (2) apply these dicamba products consistent with restrictions intended to reduce offsite movement and protect human health and the environment. This order is limited in time and scope, allowing for certain sale, distribution, and use of existing stocks of these dicamba products for the 2024 growing season. As described further below, most growers have already placed orders for dicamba-tolerant seed for the 2024 growing season and, given the timing of the vacatur of these registrations, are not able to pivot to another herbicide-tolerant seed and herbicide system. Thus, to help ensure that growers will not apply other still registered dicamba products not formulated for over-the-top use to the dicamba-tolerant seed they have already purchased, it is imperative that EPA issue this order allowing limited sale and distribution of the formerly-registered dicamba products. Additionally, because FIFRA only prohibits the use of registered pesticide products in a manner inconsistent with their labeling, without this order persons could apply the formerly-registered dicamba products without following the directions for use on the previously approved labeling. It is therefore necessary for EPA to issue this order to emphasize that growers must follow these directions for use, which were designed to reduce offsite movement.

EPA concludes that limited sale, distribution, and use of the formerly-registered dicamba products is consistent with the purposes of FIFRA for the following reasons.

- Since the court’s vacatur, EPA has received significant feedback from stakeholders about the importance of maintaining access to these products, and especially so given the lack of available alternative seed and herbicide systems because of the short period of time between the vacatur and the onset of the growing season. The formerly-registered dicamba products were approved for use only on genetically modified dicamba-tolerant soybean and cotton seeds. Relatedly, these dicamba-tolerant soybean and cotton seeds are specifically designed for use with dicamba that can be applied over-the-top. Thus, growers generally purchase and use herbicides and herbicide-tolerant seeds as a package. This

¹⁹ FIFRA § 6(a)(1), 7 U.S.C. § 136d(a)(1).

means that switching to an alternative herbicide would often also require growers to switch to alternative seed. With the growing season quickly approaching, such a switch is not likely to be feasible for most growers. In a February 12, 2024 letter to EPA, the American Seed Trade Association (ASTA) explained that most “planting decisions were made in 2023 when seed companies and producers could plant the necessary seed crop in order to have seed for the 2024 season.” Similarly, in a February 9, 2024 letter to EPA, Southern Cotton Growers, Inc. noted that “many cropping plans have been irrevocably finalized” and “[t]here is simply no time to manufacture and deliver effective, affordable alternative [planting] seeds and herbicides.”

- As noted in a February 8, 2024 letter from the Agricultural Retailers Association (ARA), “[f]armers have already made their decisions about what varieties of cotton and soybean seed they want to plant in 2024,” and “retailers are already stocking not only the [dicamba-tolerant cotton and soybean] seed but also the herbicides these growers will need for their systems.” A February 8, 2024 letter from the American Farm Bureau Federation (AFBF) similarly states that “[m]any farmers have already made planting decisions to use dicamba-tolerant crop systems and have planned to use dicamba products in the very near future.” A February 8, 2024 letter from the American Soybean Association (ASA) explains that “[v]irtually all soybean farmers placed their herbicide and herbicide-tolerant seed orders months ago,” and “there is not nearly enough alternative herbicide” to compensate for an inability to access dicamba. Similarly, a February 8, 2024 letter from the National Cotton Council (NCC) to EPA notes that there is not sufficient time before the beginning of the growing season—which has already begun in South Texas—for cotton growers to obtain alternative planting seeds and herbicides, and explained that “[p]roduction losses from poor weed control would exacerbate an already dire economic situation for cotton farmers.”
- If growers are unable to receive from distributors and use the formerly-registered dicamba products, EPA has significant concerns that they may turn to other dicamba formulations not designed for over-the-top use, which may increase the potential for offsite movement of dicamba. Dicamba is an important crop protection tool for growers. The AFBF letter states that without the formerly-registered products “farmers do not know how they will protect their crops.” The AFBF letter also notes that, while “AFBF does not condone off-label use of dicamba or any registered pesticide,” “responsible farmers that have invested in – and often taken loans out to purchase – dicamba-resistant products for the current growing season should not bear the financial burden,” of this vacatur. Further, the ASA’s letter to EPA explains that dicamba “has proven an effective tool” for managing weed varieties, including weed populations resistant to other herbicides, that “can exact catastrophic yield losses of nearly 80 percent if not controlled.” The ASA letter further notes that “for many soybean farmers in areas with high herbicide resistance pressures, dicamba is the only remaining post-emergent herbicide to which some local weed populations have not yet developed resistance.” The ASA letter also states that the use of post-emergent dicamba reduces tillage, therefore minimizing soil erosion, reducing nutrient losses to watersheds, sequestering greenhouse gases in the soil, and reducing tractor fuel usage. Because of the importance of dicamba as a weed management tool, if growers are unable to obtain and use the formerly-registered dicamba products for the 2024 growing season, there is a risk they would instead apply dicamba products not

registered for over-the-top use. The over-the-top use of these other dicamba products, which do not have measures to reduce offsite movement, would lead to the potential for increased offsite movement as compared to the use of the formerly-registered dicamba products, and therefore an increased risk of harm to the environment, including to species listed under the Endangered Species Act (ESA).

- Growers and commercial applicators have already made substantial financial expenditures in reliance on the registration of dicamba products for post-emergent use. The AFBF letter notes that growers have “invested substantial sums in the dicamba-resistant seeds in reliance on EPA’s prior approval of dicamba on these crops,” often taking out loans to purchase dicamba-resistant products for this growing season. The substantial investment made by these growers is at risk if they are not able to receive and use these products. The ARA letter to EPA similarly notes that, absent an EPA order allowing for limited sale, distribution, and use of existing stocks, there will be “unnecessary chaos and economic harm to agricultural retailers, distributors, and the farmers they serve.” In its letter to EPA, the ASA explained that soybean farmers are set to receive their orders over the next several weeks. The ASA letter explains that “thousands of growers have likely already invested millions of dollars in dicamba or DT seed purchases at this point, which they may not be able to recoup if they cannot receive or use dicamba.”
- EPA has received ample evidence that—between the completion of briefing in the District of Arizona case, but before the court issued its order and judgment vacating these registrations—existing stocks have entered the channels of trade ahead of the 2024 growing season. ASA estimated that there are millions of gallons of the formerly-registered dicamba products already in the channels of trade. EPA requested and received information from the registrants of the formerly-registered dicamba products regarding where their products are in the channels of trade. They provided information confirming the ASA estimates that several million gallons of dicamba have already entered the channels of trade, and also noted that forbidding the sale or distribution of product already in the channels of trade “would create massive logistical difficulties.” These difficulties were further highlighted in the letter from the ARA, which explained that the District of Arizona order comes “just before the busy spring planting season,” and is “extremely disruptive to ag retailers, distributors, manufacturers, and farmers who made plans to use dicamba in 2024.” Additionally, the ASA letter explains that “[m]ost volumes” of dicamba” are neither in the hands of the registrants, nor yet in the hands of growers—consistent with the information provided to EPA by the registrants. Absent an existing stocks order allowing for limited sale and distribution, millions of gallons of dicamba already in the channels of trade would remain there, unable to be accessed by growers who have already made a significant investment in dicamba-tolerant seed for the 2024 growing season and who would be left with few alternatives for this growing season—including misusing other dicamba products (which would increase the potential for offsite movement of dicamba) or suffering significant yield losses.
- The risks and costs of alternative disposition of the stocks would be substantial. As discussed above, millions of gallons of the formerly-registered dicamba products have already entered the channels of trade. Much of this volume is no longer in the possession of the registrants, but rather is in the hands of retailers and other distributors, with some of

the product already in the hands of growers. If this product in the channels of trade is unable to be used, ASA notes, it could “create a significant disposal challenge for retailers and manufacturers.” Additionally, disposal or return of product already in the channels of trade is burdensome. Disposal can be expensive, with costs for transportation and disposal itself. Disposal can also have negative environmental impacts, including increased emissions from transporting product for disposal and a greater risk of spillage where transported product containers have already been opened.

- Tracking existing stocks held by pesticide dealers may be feasible, although it is likely to be imperfect. EPA believes it is likely that most distributors of these products will learn of the restrictions on sale and distribution imposed by this order. However, it is less likely that all end users will be actually notified (notwithstanding any steps EPA takes to ensure constructive notice). For example, in a letter to EPA, one of the registrants explained that tracking of these products after they leave the possession of the registrant is “impossible.” EPA expects that users that are unaware of this order will continue to use the products consistent with their labeling because that is their regular practice when using pesticides. Thus, for reasons similar to those underlying EPA’s determination that it is not appropriate to issue a SSURO at this time, EPA does not believe that implementing restrictions on the distribution, sale, or use of existing stocks of the formerly-registered dicamba products beyond those outlined in this order is highly practical.
- The labeling on the formerly-registered dicamba products included several measures intended to prevent unreasonable adverse effects to the environment, including listed species, from the application of these products. These measures included application cutoff dates, buffer requirements, and the required use of a volatility reducing agent. Growers who have already invested in seed have a strong incentive to use their existing dicamba stocks. This order ensures that they will do so consistent with environmental protection, rather than with no limitations on use. Furthermore, application of the formerly-registered dicamba products in a manner inconsistent with the previously approved labeling may result in adverse effects to species listed as endangered or threatened under the ESA, which in turn could result in potential liability for pesticide applicators under the ESA. Additionally, use inconsistent with previously approved labeling may also violate state pesticide laws.

Regarding the distribution of existing stocks for disposal and return, EPA has also taken these factors into account. To facilitate an orderly wind-down of these dicamba products, EPA is allowing, without an end date, persons holding existing stocks other than the registrant, including end users, to return them to the registrant or dispose of them in accordance with federal, state and local waste disposal requirements. Otherwise, those existing stocks would be immovable in perpetuity in slowly deteriorating containers. Therefore, this order allows for distribution of all existing stocks for the purposes of return to the registrant or disposal, subject to conditions specified below.

EPA has concluded that the limited sale, distribution, and use of existing stocks of XtendiMax, Engenia, and Tavium is “not inconsistent with the purposes of [FIFRA].”²⁰ EPA has reached that

²⁰ FIFRA § 6(a)(1), 7 U.S.C. § 136d(a)(1).

conclusion after taking into consideration the six factors identified in the 1991 existing stocks policy, as well as the district court’s opinion, order, and judgment. Each of the six factors weighs heavily in support of allowing limited sale, distribution, and use of existing stocks. With this order, EPA expects that users will use the dicamba products consistent with their previously approved labels, and EPA has concluded that it is appropriate to allow for a short-term allowance for limited sale, distribution, and use of existing stocks based on the facts before the Agency. If additional facts come to light indicating that EPA should reconsider its decision not to issue SSUROs, the Agency will consider them. Further, EPA is imposing cut-off dates, as outlined in the section titled “EPA Order for Disposition of Existing Stocks,” for the sale, distribution, and use of existing stocks.

EPA is aware that growers 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 growers’ 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 the relevant date identified in **Table 1** and 2) for existing stocks of these dicamba products in the hands of commercial applicators to be used until the relevant date identified in **Table 1** (including moved as necessary for such use, regardless of whether the movement is sale or distribution), both subject to conditions specified below.

EPA Order for the Disposition of Existing Stocks²¹

1. Pursuant to FIFRA Section 6(a)(1), EPA hereby issues an existing stocks order for XtendiMax® with VaporGrip® Technology (EPA Reg. No. 264-1210), Engenia® Herbicide (EPA Reg. No. 7969-472), and A21472 Plus VaporGrip® Technology (Tavium® Plus VaporGrip® Technology) (EPA Reg. No. 100-1623). This order will remain in effect unless or until subsequent action is taken. 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). Any sale, distribution, or use of existing stocks of these products inconsistent with this order is prohibited.
2. **Existing Stocks.** For purposes of this order, “existing stocks” means those stocks of previously registered pesticide products that are currently in the United States and were packaged, labeled, and released for shipment prior to **February 6, 2024** (the effective date of the District of Arizona’s vacatur of the dicamba registrations). Pursuant to FIFRA section 6(a)(1), this order includes the following existing stocks provisions:

²¹ EPA intends that each provision of this order be severable. In the event of litigation staying, remanding, or invalidating all or a portion of a provision of this order, EPA intends to preserve all other provisions of this order to the fullest extent possible. EPA evaluated the consistency of each of the provisions of this order with the purposes of FIFRA, consistent with FIFRA section 6(a)(1) (7 U.S.C. § 136d(a)(1)). Further, the Agency has crafted this order so that different provisions are capable of operating independently. Accordingly, EPA has organized this order so that if any provision is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the remainder of this order invalid.

- a. **Sale or Distribution by the Registrants.** As of **February 6, 2024**, sale or distribution by the registrants of these products is prohibited, **except** for the purposes of proper disposal or to facilitate lawful export.
- b. **Sale or Distribution by Persons other than the Registrants.** Persons other than the registrants, including but not limited to co-ops and commercial distributors, who are already in possession of these products as of **February 6, 2024**, may sell or distribute these products until the end date for sale and distribution of existing stocks identified in **Table 1**; **except that** such persons may distribute these products after the date identified in **Table 1** solely for purposes of proper disposal, lawful export, or to facilitate return to the manufacturer.
- c. **Distribution or Sale by Commercial Applicators.** Notwithstanding paragraph 2.b, for the purpose of facilitating use no later than the relevant end date for use of existing stocks identified in **Table 1**, distribution or sale of existing stocks of these dicamba products that are in the possession of commercial applicators is permitted until the relevant end date for use in **Table 1**.
- d. **Use of Existing Stocks.** As of the date of this order, use of XtendiMax, Engenia, and Tavium is permitted until the relevant date identified in **Table 1**, provided that such use of existing stocks is consistent in all respects with the previously approved labeling accompanying the product.

Table 1

State(s)	End Date for Sale & Distribution of Existing Stocks for Use (2.b)	End Date for Use of Existing Stocks (2.c & 2.d)*
IA, IL, IN	<ul style="list-style-type: none"> • Sale & Distribution of XtendiMax, Engenia, or Tavium: May 13, 2024 	<ul style="list-style-type: none"> • Use of XtendiMax, Engenia, or Tavium: June 12, 2024, or V4 growth stage (soybean) or 1st square growth stage (cotton) in 2024, whichever comes first
MN	<ul style="list-style-type: none"> • Sale & Distribution of XtendiMax, Engenia, or Tavium to Purchasers South of I-94: May 13, 2024 • Sale & Distribution of XtendiMax, Engenia, or Tavium to Purchasers North of I-94: May 31, 2024 	<ul style="list-style-type: none"> • Use of XtendiMax, Engenia, or Tavium south of I-94: June 12, 2024 • Use of XtendiMax, Engenia, or Tavium north of I-94: June 30, 2024
SD	<ul style="list-style-type: none"> • Sale & Distribution of XtendiMax, Engenia, or Tavium: May 21, 2024 	<ul style="list-style-type: none"> • Use of XtendiMax, Engenia, or Tavium: June 20, 2024

AL, AZ, AR, CO, DE, FL (excluding Palm Beach County), GA, KS, KY, LA, MD, MI, MS, MO, NE, NJ, NM, NY, NC, ND, OH, OK, PA, SC, TN (excluding Wilson County), TX, VA, WV, WI	<ul style="list-style-type: none"> • Sale & Distribution of XtendiMax, Engenia, or Tavium for Use on Dicamba-Tolerant Soybean: May 31, 2024 • Sale & Distribution of XtendiMax, Engenia, or Tavium for Use on Dicamba-Tolerant Cotton: June 30, 2024 	<ul style="list-style-type: none"> • Use of XtendiMax, Engenia, or Tavium on Dicamba-Tolerant Soybean: June 30, 2024 • Use of XtendiMax, Engenia, or Tavium on Dicamba-Tolerant Cotton: July 30, 2024
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*The end dates for the use of existing stocks outlined in this Table are consistent with the application cut-off dates on the previously approved labeling of the formerly-registered dicamba products at the time of vacatur. EPA believes these cut-off dates are appropriate because they will minimize confusion amongst the grower community. Furthermore, establishing cut-off dates in this order consistent with those on the previously approved labeling is expected to encourage lawful use.

Edward Messina
Director
Office of Pesticide
Programs