EPA Announces End Dates for Sales, Distribution, and Use of Existing Stocks on Over-the-Top Uses of Dicamba

Article By:

James V. Aidala

Lisa R. Burchi

Barbara A. Christianson

On April 3, 2024, the U.S. Environmental Protection Agency (EPA) issued a *Federal Register* notice providing notice of its issuance of an Existing Stocks Order and announcing the end dates for sales, distribution, and use of existing stocks on over-the-top (OTT) uses of dicamba subject to the Order. 89 Fed. Reg. 23010. This announcement follows the February 14, 2024, Existing Stocks Order for Dicamba Products Previously Registered for Over-the-Top Use on Dicamba-Tolerant Cotton and Soybean (Existing Stocks Order), and the revised Existing Stocks Order issued on March 12, 2024, which were in response to the February 6, 2024, ruling by the U.S. District Court of Arizona vacating the 2020 registrations for OTT dicamba products.

EPA issued an Existing Stocks Order to allow for the disposition of any existing stocks of these formerly registered OTT dicamba products. "Existing stocks" are defined to include 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. Under EPA regulations, 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. The Existing Stocks Order also prohibits the use of these dicamba products except where the use is consistent with the previously approved labeling, including but not limited to measures intended to reduce environmental damage caused by off-site movement of the pesticide.

EPA states the Existing Stocks Order is limited in time and scope. While the sale and distribution of existing stocks of these formerly registered dicamba products for the 2024 growing season by registrants is prohibited (except for the purposes of proper disposal or to facilitate lawful export), sales and distributions can continue for persons other than registrants and commercial applicators in certain circumstances for certain time periods as set forth in the Existing Stocks Order.

Specifically, EPA states that sales and distribution by co-ops and commercial distributors already in possession of OTT dicamba products may sell or distribute the products until the following dates

listed on the tables below:

Table 1

State(s)	End date for sale & distribution of existing stocks for use	End date for use of existing stocks*
IA, IL, IN	Sale & Distribution of XtendiMax, Engenia, or Tavium: **May 13, 2024**	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	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**	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	Sale & Distribution of XtendiMax, Engenia, or Tavium: **May 21, 2024**	Use of XtendiMax, Engenia, or Tavium: **June 20, 2024**.
AL, AZ, 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	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**	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**.

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 the Existing Stocks Order consistent with those on the previously approved labeling is expected to encourage lawful use.

Table 2

State	End date for sale & distribution of existing stocks for use	End date for use of existing stocks*
AR	Sale & Distribution of XtendiMax, Engenia, or Tavium: **May 31, 2024**	Use of XtendiMax, Engenia, or Tavium: **June 30, 2024**.

The end date for the use of existing stocks outlined in this Table is consistent with the application cut-off date under Ark. Admin. Code 209.02.4-XIII. EPA did not intend its February 14, 2024, Order to allow use of these dicamba products beyond any state-imposed application cutoff dates. Nevertheless, EPA added this cut-off date to the order to provide clarity to users in Arkansas.

Additional information is available at https://www.regulations.gov/docket/EPA-HQ-OPP-2020-0492.

Commentary

Clarification of the end dates for sale and use of the OTT products addresses much of the problem articulated by users for the current growing season. The major immediate concern was whether alternative products and supplies might be available, and worse for some users, the product seemingly prohibited was already on order and/or paid for. The uncertainty of whether users could use a product they already had paid for or had no apparent alternative was stirring intense criticism and possible legislation on Capitol Hill. The Existing Stocks Order quiets the issue, at least relatively, and at least for now.

What the future holds for these registrations next year is unclear. That it comes in an election year may not help make the underlying issues easier to address.

©2025 Bergeson & Campbell, P.C.

National Law Review, Volume XIV, Number 106

Source URL:https://natlawreview.com/article/epa-announces-end-dates-sales-distribution-and-use-existing-stocks-over-top-uses