



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2020-0612; FRL 10017-99-OGC]

Proposed Settlement Agreement; Biological Evaluations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's October 16, 2017, Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of a proposed settlement agreement in the five consolidated petitions for review in *Center for Biological Diversity, et al. v. EPA* (D.C. Cir. Nos. 15-1054, 15-1176, 15-1389, 15-1462 and 16-1351) in the United States Court of Appeals for the District of Columbia. In 2015 and 2016, the Center for Biological Diversity and other Petitioners (collectively, "Petitioners") filed five petitions for review of registrations containing five active ingredients: flupyradifurone, bicyclopyrone, benzovindiflupyr, cuprous iodide, and haluaxifen-methyl. The five petitions for review alleged that EPA violated the Endangered Species Act ("ESA") by failing to consult on the effects to listed species when registering products containing the five new active ingredients. The Court consolidated the cases on June 20, 2018. The registrants for each active ingredient other than cuprous iodide sought and were granted intervention.

EPA, the Petitioners and the Defendant-Intervenors (collectively, "the Parties") are proposing to enter into an out-of-court settlement agreement, which, among other things, calls for the Parties to file a Joint Motion for Order on Consent requesting that the Court order EPA to: complete a final effects determination for any use of cuprous iodide that is approved for sale and distribution by August 13, 2021; complete final Biological Evaluations for two of the other active ingredients by September 30, 2025 and the remaining two active ingredients by September 30, 2027; and initiate consultation with the National Marine Fisheries Service and/or the Fish

and Wildlife Service (Services) as appropriate based on the outcome of the Biological Evaluations.

DATES: Written comments on the proposed settlement agreement must be received by **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2020-0612 online at www.regulations.gov (EPA's preferred method). For comments submitted at www.regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Erin S. Koch, Pesticides and Toxic Substances Law Office (2333A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564-1718; email address: koch.erin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

In 2015 and 2016, Petitioners filed five petitions for review in the Court of Appeals for

the D.C. Circuit as EPA issued registrations for five new active ingredients, namely flupyradifurone, bicyclopyrone, benzovindiflupyr, cuprous iodide, and halauxifen-methyl. The petitions for review alleged that EPA violated Section 7(a)(2) of the ESA by failing to consult on the effects to listed species of the five new active ingredients. The Court consolidated the cases on June 20, 2018. The registrants for each active ingredient other than cuprous iodide sought and were granted intervention.

The Parties have been engaged in settlement negotiations to reach an agreement in this case. The proposed settlement agreement between the Parties calls for, among other things, the Parties to file a Joint Motion for Order on Consent requesting that the Court order EPA to: 1) complete a final effects determination for any use of cuprous iodide that is approved for sale and distribution by August 13, 2021; 2) complete final Biological Evaluations (BEs) for two of the other active ingredients by September 30, 2025 and the remaining two active ingredients by September 30, 2027; and 3) initiate consultation as appropriate based on the outcome of the BEs.

Similar to the settlement agreement in *CBD, et al. v. EPA, et al.* (Case No. CV-11-0293-JCS (N.D. Cal.)), this proposed settlement agreement provides for the possibility of extending these dates if specific events occur, such as an extension of a comment period.

In addition to the commitments above, the settlement agreement provides that within three months of issuance of draft BEs or no later than December of 2024 and 2026, the Parties will meet and discuss potential interim measures. The settlement agreement also provides that EPA will maintain a webpage that includes the settlement agreement, associated court orders, and a link to an independent 3rd-party webpage hosted, maintained, and funded by Defendant-Intervenors.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who are not named as parties to the litigation in question. EPA may withdraw or withhold consent to the proposed settlement if the comments disclose facts or considerations that

indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the ESA or the Federal Insecticide, Fungicide, and Rodenticide Act. Unless EPA determines that consent should be withdrawn, the terms of the proposed settlement agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the proposed settlement agreement?

The official public docket for this action (identified by EPA-HQ-OGC-2020-0612) contains a copy of the proposed settlement agreement and proposed order that will be filed with the Joint Motion for Order on Consent. The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

The electronic version of the public docket for this action contains a copy of the proposed settlement agreement and proposed order that will be filed with the Joint Motion for Order on Consent, and is available through <https://www.regulations.gov>. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number

then select “search.” It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Please refer to the information above about the current status of the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to

EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Joseph E. Cole,

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[FR Doc. 2020-27541 Filed: 12/14/2020 8:45 am; Publication Date: 12/15/2020]