



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2021-0957; FRL-11675-01-OCSP]

United States Department of Justice and Parties to Certain Litigation; Transfer of Information Potentially Containing Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces that pesticide-related information submitted to the Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to the U.S. Department of Justice (DOJ) and parties to certain litigation. This transfer of data is in accordance with the CBI regulations governing the disclosure of potential CBI in litigation.

DATES: Access to this information by DOJ and the parties to certain litigation is ongoing and expected to continue during the litigation as discussed in this document.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Registration Division (7505M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566-2659; email address: RDFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION: This document is being provided pursuant to 40 CFR 2.209(d) to inform affected businesses that EPA, via DOJ, will provide certain information to the parties and the Court in the matter of *Center for Food Safety, et al. v. U.S. Environmental Protection Agency, et al.* (Case No. 1:23-cv-1633) (D.D.C.). The information is contained in documents that have been submitted to EPA pursuant to FIFRA and FFDCA by pesticide registrants or other data-submitters, including information that has been claimed to be, or

determined to potentially contain, CBI. In the pending litigation, petitioners seek judicial review of EPA's decision of January 11, 2022, to extend the time-limited registrations for GF-3335 Enlist One, an herbicide containing the active ingredient 2,4-dichlorophenoxyacetic acid choline salt ("2,4-D"), and Enlist Duo an herbicide containing the active ingredients 2,4-D and glyphosate dimethylammonium salt ("glyphosate"), as well as EPA's decision of March 29, 2022, to allow use of those herbicides in additional counties.

The documents are being produced as part of the Administrative Record of the decisions at issue and include documents that registrants or other data-submitters may have submitted to EPA regarding the Enlist One and Enlist Duo pesticide products, and that may be subject to various release restrictions under federal law. The information includes documents submitted with pesticide registration applications and may include CBI as well as scientific studies subject to the disclosure restrictions of section 10(g) of FIFRA, 7 U.S.C. 136h(d).

All documents that may be subject to release restrictions under federal law are designated as "Protected Information" in the certified list of record materials and are designated as "Protected Information" under a Protective Order that the Court entered on December 19, 2023. The Protective Order precludes public disclosure of any such documents by the parties in this action who have received the information from EPA, unless a party successfully obtains a de-designation as Protected Information of any portion of the Administrative Record via the procedure described in paragraph 6 of the Protective Order and limits the use of such documents to litigation purposes only. Further, paragraph 6(h) of the Protective Order states: "At any time, the court may de-designate any portion of the administrative record without advanced notice to the parties." If filed with the Court, such documents would be filed under seal and would not be available for public review, unless the information contained in the document has been determined to not be subject to section 10(g) of FIFRA and all CBI has been redacted.

At the conclusion of the litigation, the Protective Order requires that record material EPA designates as "Protected Information" be destroyed or returned to EPA.

Authority: 7 U.S.C. 136 *et seq.*; 21 U.S.C. 301 *et seq.*

Dated: January 18, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2024-01503 Filed: 1/25/2024 8:45 am; Publication Date: 1/26/2024]