

Comment of Bayer Crop Science
Re: Proposed Dicamba Rule Amendment for 2021
Submitted: April 22, 2021

The Plant Board Should Allow Arkansas Farmers to Use Low-Volatility Dicamba Herbicides According to the Federal Label

A. EPA Has Determined that the Best Available Science Supports Use of the Products According to the New Federal Label

In October 2020, EPA approved new five-year federal registrations for XtendiMax[®] with VaporGrip[®] Technology (“XtendiMax”) and one other low-volatility dicamba herbicide and extended the registration of another low-volatility dicamba product. Before granting registration of these products, EPA was required to find—and did find—that approval of the products would not cause “unreasonable adverse effects on the environment.” 7 U.S.C. § 136a(c)(5).

In reaching its October 2020 dicamba registration decision, EPA received and considered input from a variety of sources, including researchers, state regulators, pesticide manufacturers, and grower groups. EPA also reviewed substantial amounts of new information and conducted scientific assessments based on the best available science. Specifically, EPA reviewed and summarized more than 25 studies in documents supporting the registration, including 6 new humidome studies and 21 field studies. This included 14 field studies on Monsanto’s XtendiMax herbicide, 9 of which were performed by academic researchers. Based on its review and analysis of this evidence, EPA concluded that the registration of these products met the registration standards set forth in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).¹

As part of its registrations, EPA also implemented several use restrictions for the low-volatility dicamba herbicides, including downwind buffers, cut-off dates for over-the-top use (June 30 for soybeans and July 30 for cotton), and mandatory use of a qualified volatility-reduction adjuvant.

EPA’s October 2020 decision to approve registrations for low-volatility dicamba herbicides clearly supports that the Plant Board should likewise permit Arkansas farmers to use these herbicides according to the federal label approved by EPA.

B. Arkansas Statutes Require the Plant Board to Defer to the Regulatory Decisions of EPA

Arkansas law requires the Plant Board to use EPA findings as a guide when regulating pesticides within the State. The section of the Arkansas Pesticide Control Act entitled “Powers of State Plant Board” specifically directs that, in determining whether a pesticide is injurious to the environment, the Plant Board “shall be guided by the United States Environmental Protection Agency regulations.” Ark. Code Ann. § 2-16-406(a)(3).

Similarly, in the Arkansas Pesticide Use and Application Act, the Arkansas legislature specifically directed that “[i]n issuing regulations, the board shall give consideration to

¹ See EPA News Release, Oct. 27, 2020, available at <https://www.epa.gov/newsreleases/epa-announces-2020-dicamba-registration-decision>.

pertinent research findings and recommendations of ... the United States Government” Ark. Code Ann. § 20-20-206(a)(2).

As stated above, the EPA’s recent registration decision for low-volatility dicamba herbicides was the result of a robust review process based on the best available science. Under Arkansas law, the Arkansas Plant Board cannot ignore or set aside EPA findings. To the contrary, the Board should be guided by the EPA’s regulatory determinations in making its determinations regarding use of low-volatility dicamba herbicides.

C. The Additional Restrictions on the Use of These Products Being Considered by the Board Are Not Supported by Science, EPA, or Other States

As mentioned above, the EPA’s October 2020 registrations include several new control measures to further ensure that the low-volatility dicamba herbicides can be used effectively while protecting the environment, including non-target plants, animals and other crops not tolerant to dicamba.

Specifically, the new, EPA-approved XtendiMax label includes the following measures to further reduce the potential for off-site movement:

- Requirement that the XtendiMax herbicide be tank-mixed with an approved volatility-reduction adjuvant (VRA) for all applications to further control volatility
- Requirement of a downwind buffer of at least 240 feet, and 310 feet in areas where listed species are located.
- Prohibition on over-the-top (OTT) application on soybeans after June 30 and cotton after July 30.
- Simplified label and use directions to help growers more easily understand when and how to properly apply the herbicide.

The different and additional restrictions that are currently in place in Arkansas on the use of low-volatility dicamba herbicides that are once again under consideration by the Board are not supported by the best available science or by EPA. As discussed above, the EPA considered a number of scientific sources, including more than 25 new studies, and determined that the best available science supported the new registrations with the control measures in the federal label.

The other states have largely adopted the federal label in recognition of the EPA’s thorough analysis. All 34 states, including Arkansas, completed their state registration of the federal label before the end of January 2021. No state imposed a more restrictive label than the prior year. Minnesota adopted the federal label, thus lessening its restriction from the prior year. Indiana, Illinois and Arkansas imposed some additional restrictions beyond the federal label, but all were similar to the prior year. Specifically, Illinois and Indiana prohibit over-the-top use after June 20, while Illinois also prohibits use under certain high-temperature situations.

Four states—North Carolina, Tennessee, Georgia, and Texas—have issued Special Local Needs registrations under FIFRA section 24(c) seeking to expand use beyond the federal label. Specifically, the North Carolina and Tennessee amendments extend the application cut-off date from June 30th to the end of July. Both of these 24(c) registrations have been disapproved by EPA for this growing season. Georgia’s amendments to the federal registration amend the application cut-off dates to plant stage cut-offs, reduce buffer distances in non-ESA

(Endangered Species Act) impacted counties, and modify training requirements and hooded sprayer language. The Texas amendments to the federal registration intend to expand the application cut-off date for cotton to August 31 in the 87 counties labeled for weeds in TX and allow applications to dicamba-tolerant cotton at any time of day (sunrise to sunset) if there are no temperature inversions at field level

In issuing the new 2020 registrations, EPA specifically addressed the concerns regarding the 2018 registrations that were expressed by the United States Court of Appeals for the Ninth Circuit. EPA developed a voluminous new record and imposed significant new requirements for applicators that were designed to further address the risk of volatility or drift. The new registrations, which contain these additional control measures, also address the concerns with the prior registrations that have previously been expressed by the Plant Board.

Growers in Arkansas continue to face increased weed pressure. Adopting the federal label for these low-volatility herbicides in Arkansas will bring a much-needed tool to Arkansas growers that is available to growers in the other states, while also ensuring that control measures are in place to protect the environment.

Based on the foregoing, Bayer Crop Science respectfully requests that the Plant Board permit use of XtendiMax in Arkansas according to its federal label in 2021.