



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2022-0223; FRL-10138-01-OCSP]

Cancellation Order for Certain Chlorpyrifos Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces an Environmental Protection Agency (EPA) order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the chlorpyrifos products listed in Table 1 of Unit I., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows an April 28, 2022, *Federal Register* Notice of Receipt of requests from the registrants listed in Table 2 of Unit I. to voluntarily cancel these chlorpyrifos product registrations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations and amendments are effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Patricia Biggio, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 202-566-0700; email address: OPPChlorpyrifosInquiries@epa.gov.

ADDRESSES: The docket for this action, identified under docket identification (ID) number EPA-HQ-OPP-2022-0223, is available online at <https://www.regulations.gov>. Additional instructions on visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What action is the Agency taking?

This document announces the cancellations, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 of this unit.

Table 1 – Product Cancellations

EPA Registration No.	Company No.	Product Name	Active ingredients
279-3538	279	Nufos 4E	Chlorpyrifos
279-3581	279	Bolton Insecticide	Chlorpyrifos & gamma-Cyhalothrin
279-9545	279	F9047-2 EC Insecticide	Chlorpyrifos & Zeta-Cypermethrin
279-9572	279	Gat Chlorpyrifos Cs	Chlorpyrifos
279-9574	279	Chlorpyrifos 42 CS	Chlorpyrifos
499-367	499	Whitmire PT 275 Dur-O-Cap Microencapsulated Chlorpyrifos	Chlorpyrifos
499-405	499	Whitmire PT 1920 Total Release Insecticide	Chlorpyrifos
499-419	499	Duration PT 275 MC Microencapsulated Dursban Liquid Concentrate	Chlorpyrifos
53883-264	53883	CSI Chlorpyrifos CS	Chlorpyrifos
53883-331	53883	CSI Chlorpyrifos 42 CS Insecticide	Chlorpyrifos
53883-355	53883	CSI Chlorpyrifos 20 CS	Chlorpyrifos
86363-11	86363	Bifenchlor	Bifenthrin & Chlorpyrifos
89168-20	89168	Liberty Chlorpyrifos Bifenthrin	Bifenthrin & Chlorpyrifos
89168-24	89168	Liberty Chlorpyrifos 4E	Chlorpyrifos
89168-47	89168	Liberty Granular Insecticide	Bifenthrin & Chlorpyrifos
89459-69	89459	Equil Pyrifos	Chlorpyrifos

Table 2 – Registrants of Cancelled Products

Company No.	Company name and address
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104
499	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709-3528
53883	Control Solutions, Inc., 5903 Genoa Red Bluff Road, Pasadena, TX 77507
86363	Kaizen Agent Name: Lighthouse Product, Services Technologies, LLC, 2411 S. Bear Claw Way, Meridian, ID 83642
89168	Liberty Crop Protection, LLC, 1880 Fall River Dr., #100, Loveland, CO 80538
89459	Central Garden & Pet Company, 1501 East Woodfield Road, Suite 200W, Schaumburg, IL 60173

C. What is the Agency's authority for taking this action?

FIFRA section 6(f)(1), 7 U.S.C. 136d(f)(1), provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations or registered uses be cancelled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the *Federal Register*.

FIFRA section 6(f)(1)(B), 7 U.S.C. 136d(f)(1)(B), requires that before acting on a request for voluntary cancellation, EPA must provide a 30-public comment period on the request for voluntary cancellation or use termination. Following the public comment period, the EPA Administrator may approve such a request.

II. Background

A. Brief History

In August 2021, EPA issued a rule revoking chlorpyrifos tolerances on the grounds that the chlorpyrifos tolerances were not safe (86 FR 48315, August 30, 2021) (FRL-5993-04-OCSP) publication in the *Federal Register*. Pursuant to the procedures set forth in FFDCA section 408(g)(2), objections to, requests for evidentiary hearings on those objections, and/or requests for stays of the final rule were filed on or before the close of the objections period on October 29, 2021. On February 28, 2022, EPA issued an Order denying all objections to, requests for hearing on those objections, as well as requests for stay of the August 2021 final rule published in the *Federal Register* on February 28, 2022 (87 FR 11222) (FRL-5993-05-OCSP).

Those tolerances expired on February 28, 2022. Once the tolerances expired, pesticide

products containing chlorpyrifos could no longer be used on food crops. After EPA alerted registrants of chlorpyrifos products of the lack of tolerances and the options for their products, several registrants submitted requests to voluntarily cancel their chlorpyrifos pesticide products.

In April 2022, the notice of receipt of the request for voluntary cancellation or use termination related to this action published for comment in the *Federal Register* on April 28, 2022 (87 FR 25256) (FRL-9723-01-OCSP). The 30-day public comment period closed on May 31, 2022.

B. Summary of Comments Received

During the public comment period, EPA received seven substantive comments in response to the April 2022 notice of receipt. The comments can be found in the docket for this action and are briefly summarized here.

Comments submitted by the Arizona Farm Bureau Federation, the American Farm Bureau Federation, the Agricultural Retailers Association, the Cherry Marketing Institute, and a joint comment from the American Sugar Beet Growers Association, the U.S. Beet Sugar Association, and the Beet Sugar Development Foundation opposed the cancellation of the products containing chlorpyrifos due to the importance of chlorpyrifos for growers. In particular, these commenters specified concerns that growers will have difficulty protecting their crops against certain pests without chlorpyrifos and that growers may use more significant quantities of less-effective products, contributing to resistance issues. In addition, these commenters make note of litigation challenging EPA's rule revoking the chlorpyrifos tolerances that is currently pending in the United States Court of Appeals for the 8th Circuit, *Red River Valley Sugarbeet Growers Ass'n et al., v Regan, et al.*, No. 22-1422 (8th Cir.), and request that EPA postpone cancellation of chlorpyrifos products until the litigation is resolved.

C. EPA Response to Comments

EPA is declining to postpone the cancellations requested by the registrants subject to this cancellation order. Postponing the cancellations would essentially impose a responsibility on the

registrants subject to this order to retain and maintain their registrations indefinitely. The resolution and timing of the litigation is unknown, and retention of the registrations could subject registrants to additional maintenance fees and responsibilities for those registrations. See, e.g., 40 CFR part 152, subpart G (registrant responsibilities); 7 U.S.C. 136a-1(i)(1) (maintenance fee obligations); 7 U.S.C. 136e (production reporting requirements); 7 U.S.C. 136f (recordkeeping requirements).

EPA also notes that some of the registrations being cancelled in this Order do not contain labeling bearing food uses, so any outcome of the litigation is irrelevant. In any event and more importantly, FIFRA section 6(f) allows a registrant to request voluntary cancellation of a pesticide product registration at any time for many reasons, including lack of interest in maintaining the registration or the pesticide no longer being marketed. EPA cannot compel registrants to maintain a registration indefinitely if they request to voluntarily cancel it. Moreover, retention of these registrations will not make chlorpyrifos products available for use as the commenters desire. The revocation of the tolerances means that application of chlorpyrifos to food crops will result in adulterated food. While cancellation of these 16 products does not terminate the last of the chlorpyrifos products registered in the United States, these products (and other remaining chlorpyrifos products) cannot be applied to food crops that will be shipped in interstate commerce.

Finally, these commenters also questioned the Agency's rationale for revoking all chlorpyrifos tolerances due to the Agency's proposed mitigations in the *Chlorpyrifos Proposed Interim Decision* (December 3, 2020). Those comments are challenges to EPA's rule revoking tolerances, which is being separately litigated and is outside the scope of this action.

Several commenters highlighted concerns regarding the existing stocks provisions from the April 2022 notice of receipt that indicated the Agency did not identify potential risk concerns and anticipated allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the *Federal Register*. Earthjustice commented

that the existing stocks language in the April 2022 notice of receipt that would be applicable to chlorpyrifos products in the notice indicates that EPA anticipated allowing registrants to sell and distribute existing stocks of chlorpyrifos for one year after the publication of the cancellation order and to allow others to sell, distribute, and use existing stocks until exhausted. Earthjustice asserts that EPA cannot allow for existing stocks of chlorpyrifos to be sold, distributed, or used in this way as a result of the revocation of all chlorpyrifos tolerances. See the August 30, 2021 (86 FR 48315) (FRL-5993-04-OCSPP) publication in the *Federal Register*.

The applicability of the existing stocks language in the April 2022 notice of receipt to chlorpyrifos products was an oversight and is being corrected in this cancellation order. The existing stocks section of the April 2022 notice of receipt contained specific language pertaining to one specific product (not the chlorpyrifos products) and other language “for all other voluntary cancellations listed in the notice.” 87 FR 25259. That language provided broad existing stocks provisions due to the Agency’s conclusion that there were “no significant potential risk concerns associated with those pesticide products.” *Id.* In using somewhat standard language for a voluntary cancellation notice, EPA failed to specify a different existing stocks provision for the chlorpyrifos products in the notice, for which tolerances were revoked due to EPA’s conclusion that chlorpyrifos tolerances were not safe. See 87 FR 11222. FIFRA section 6(a)(1) gives EPA the discretion to permit the continued sale and use of existing stocks, where doing so is determined to be consistent with the purposes of FIFRA. 7 U.S.C. 136d(a)(1). In the case of the chlorpyrifos registrations subject to this order, without tolerances in place to cover residues from use of these products, these products may not be used on food, nor may they be sold or distributed. Allowing for continued use or sale would not be consistent with FIFRA; therefore, EPA is not allowing for continued sale, distribution, or use of chlorpyrifos products listed above.

III. The Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit I. Accordingly, the Agency hereby

orders that the product registrations identified in Table 1 of Unit I. are cancelled.

The cancellations and amendments addressed in this Order are effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit I. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

IV. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The language regarding the intended disposition of existing stocks that published in the *Federal Register* on April 28, 2022 (87 FR 25256) (FRL-9723-01-OCSPP) on page 25259 is not appropriate for application to the pesticide products subject to this Order.

None of the registrants listed in this order have requested any continued sale or distribution of existing stocks of the registrations subject to this cancellation order nor have they requested special provisions to relabel the products listed in this order. Because of that and because chlorpyrifos tolerances have been revoked and use of chlorpyrifos renders food adulterated, all sale, distribution, and use of the chlorpyrifos products identified in Table 1 of Unit I. is prohibited, except for export consistent with FIFRA section 17, 7 U.S.C. 136o or for proper disposal.

Dated: August 26, 2022.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

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