

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2009-0481; FRL-8425-1]

Proposed Stipulated Injunction Involving Pesticides and Eleven Species Listed as Threatened or Endangered Under the Endangered Species Act; Notice of Availability**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of availability; request for public comment.

SUMMARY: EPA is making available for comment a proposed Stipulated Injunction that would establish a series of deadlines for the Agency to make "effects determinations" and initiate consultation, as appropriate, with the U.S. Fish and Wildlife Service for certain pesticides in regard to one or more of 11 species found in the greater San Francisco Bay area that are listed as endangered or threatened under the Endangered Species Act. EPA will evaluate all comments received during the public comment period to determine whether all or part of the proposed Stipulated Injunction warrants reconsideration or revision. This proposed Stipulated Injunction, if entered by the Court, would resolve a lawsuit brought against EPA by the Center for Biological Diversity in the United States District Court for the Northern District of California.

DATES: Comments must be received on or before July 16, 2009.**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2009-0481, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2009-

0481. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Arty Williams, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7695; fax number: (703) 305-6309; e-mail address: williams.arty@epa.gov.**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of particular interest to the Center for Biological Diversity (CBD), CropLife America, Responsible Industry for a Sound Environment, Reckitt Benckiser, other public interest groups, state regulatory partners, other interested federal agencies, and other pesticide registrants and pesticide users. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is making available for comment a proposed Stipulated Injunction that would establish a series of deadlines for the Agency to make "effects determinations" and initiate consultation, as appropriate, with the U.S. Fish and Wildlife Service (FWS) in connection with 74 pesticides and 11 species listed under the Endangered Species Act (ESA) as either endangered or threatened. The species, found in the greater San Francisco Bay area, are: Alameda whipsnake, bay checkerspot butterfly, California clapper rail, California freshwater shrimp, California tiger salamander, delta smelt, salt marsh harvest mouse, San Francisco garter snake, San Joaquin kit fox, tidewater goby, and valley elderberry longhorn beetle. EPA will evaluate all comments received during the public comment period to determine whether all or part of the proposed Stipulated Injunction warrants reconsideration or revision. This proposed Stipulated Injunction, available in the public docket, if entered by the United States District Court for the Northern District of California, would resolve a lawsuit brought against EPA by CBD.

III. Background

On May 30, 2007, CBD filed a lawsuit in the Federal District Court for the Northern District of California alleging that EPA failed to comply with 16 U.S.C. 1531–1544 in regard to 47 pesticides and 11 species that are listed as endangered or threatened under the ESA (*Center for Biological Diversity v. EPA*, No. C 07-02794 JCS (N.D. Cal.)). Ultimately, 74 pesticides came to be at issue in this case. EPA has reached an agreement with CBD that would establish a schedule for EPA to come into compliance with section 7(a)(2) of the ESA for these 74 pesticides and 11 species, and would include interim injunctive relief intended to reduce the potential exposure of the 11 species to these pesticides during the period of time in which EPA will be satisfying its section 7(a)(2) consultation obligations. The agreement is embodied in the proposed Stipulated Injunction that is being made available for review and comment through this notice.

The 74 pesticide active ingredients named in the lawsuit are: 2,4-D, acephate, acrolein, alachlor, aldicarb, aluminum phosphide, atrazine, azinphos-methyl, bensulide, beta-cyfluthrin, bifenthrin, brodifacoum, bromadiolone, bromethalin, carbaryl, carbofuran, chlorophacinone, chlorothalonil, cholecalciferol, chlorpyrifos, cyfluthrin, cyhalothrin (lambda), cypermethrin, deltamethrin, diazinon, difethialone, dimethoate, diphacinone, diquat dibromide, disulfoton, endosulfan, EPTC (eptam), esfenvalerate, ethoprop, fenprothrin, fipronil, fluvalinate, imidacloprid, magnesium phosphide, malathion, maneb, mancozeb, metam sodium, methamidophos, methidathion, methomyl, methoprene, methyl bromide, metolachlor, naled, oryzalin, oxydemeton-methyl, oxyfluorfen, PCNB, pendimethalin, permethrin, phenothrin, phomet, phorate, potassium nitrate, propargite, resmethrin, s-metolachlor, simazine, sodium cyanide, sodium nitrate, strychnine, tetramethrin, thiobencarb, tralomethrin, trifluralin, warfarin, zeta-cypermethrin, and zinc phosphide. EPA has already made effect determinations for 6 of these pesticides relative to a subset of the 11 species: 2,4-D, alachlor, atrazine, endosulfan, permethrin, and phorate. For the remaining pesticides, EPA will make effect determinations for each of these pesticides and some subset of the 11 species at issue on a rolling basis, starting with a first batch of effect determinations due October 20, 2009, and ending with a last batch of effect determinations due no later than June 30, 2014.

In addition, and as already mentioned above, the Stipulated Injunction would (with some exceptions) enjoin, vacate and set aside EPA's authorization of use of the pesticides in and adjacent to certain habitat features associated with each of the 11 species in specific geographic areas within 8 California counties (Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma). This interim injunctive relief would terminate automatically for a pesticide upon the completion of EPA's consultation obligation under section 7(a)(2) of the ESA (including a "no effect" determination) for the particular pesticide. The Stipulated Injunction would also require EPA to develop and distribute a brochure regarding the Stipulated Injunction and the 11 species, provide certain information to certified pesticide applicators in California, and provide certain information to the public through the EPA web site.

Beginning July 1, 2009, EPA is opening a 15-day comment period on the proposed Stipulated Injunction. EPA will review any comments received to determine whether all or part of the proposed Stipulated Injunction warrants reconsideration or revision. If EPA determines that any part of the proposed Stipulated Injunction merits reconsideration or revision, EPA will contact CBD concerning this matter and the proposed Stipulated Injunction will not be submitted to the Court until EPA and CBD reach agreement on any such changes. If EPA determines that the proposed Stipulated Injunction does not need to be reconsidered or revised, the proposed Stipulated Injunction will be submitted to the Court and shall become effective upon entry of an Order by the Court ratifying the Stipulated Injunction. Once the Stipulated Injunction is ratified by Order of the Court, EPA will post on its web site at <http://www.epa.gov/pesticides> a notice indicating the Stipulated Injunction has been so entered.

List of Subjects

Environmental protection,
Endangered species.

Dated: June 25, 2009.

James Jones,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0321; FRL–8417–2]

Sodium Dimethyldithiocarbamate; Notice of Receipt of Requests for Amendments to Delete Uses in a Pesticide Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in a pesticide registration. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.