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Dicamba Regulations: The Arkansas Framework for Dicamba Use and Restrictions Takes Shape

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February and March were busy months for the Arkansas Agriculture Department's Arkansas State Plant Board ("ASPB").

On February 20, 2019, the State Plant Board voted to approve regulatory changes for in-crop, over-the-top use of the herbicide dicamba on approved dicamba-tolerant crops. The State Plant Board filed the new rule with the Secretary of State's office just a week later. The final rules became effective March 11th. However, just 10 days later, the State Plant Board filed an emergency rule seeking to clean-up areas of confusion.

<u>Background</u>

Dicamba is a broadleaf weed herbicide historically applied in late winter/early spring, prior to planting crops. Though first registered in the late 1960s, dicamba returned to prominence in 2016 when EPA first registered the product for over-the-top use (i.e., during the growing season) on approved, dicamba tolerant cotton and soybeans. EPA's registration and the increase of in-season use coincided with increased weed resistance to the popular herbicide, glyphosate.

Over-the-top application of dicamba has not been without controversy in the nation's farm belt. Drift to non-target crops, including non-tolerant soybeans, cotton, vegetables, orchards and trees helped sow some deep divisions between farmers and non-farmers alike. Ultimately, Arkansas imposed date restrictions to prohibit over-the-top use during much of the 2018 growing season.

On October 31, 2018, the U.S. Environmental Protection Agency (EPA) extended the registration for dicamba for over-the-top use for another two years, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). EPA's approval included a number of changes to the product label that required, among other things:

- Certified applicators;
- Prohibitions on use on soybeans 45-days after planting and cotton 60-days after planting; and,
- Buffer areas.

On December 6, 2018, the Arkansas State Plant Board approved draft regulations for over-the-top use of dicamba within the State. The proposed regulations restricted application of dicamba from May 21 through October 31. The proposed regulations also placed limits on use of the product between April 16 and May 20, including:

- One mile buffer zone around agriculture research stations, organic crops, specialty crops, non-tolerant dicamba crops, and other sensitive crops, and
- Restrictions on mixing glyphosate with dicamba.

Final State Regulations

The State Plant Board made some minor changes to the December 6th proposal but otherwise carried forward the Proposed Regulation. The Final Regulation for over-the-top use of dicamba in Arkansas includes the following requirements, restrictions, and prohibitions:

- Restricts over-the-top application of dicamba from May 26 through October 31 of each year;
- Establishes a half-mile buffer zone around all non-dicamba crops;
- Establishes a one-mile buffer zone around university and USDA research stations, certified organic corps and commercially grown specialty crops between April 16 and May 25;
- Prohibits the mixing of the herbicide glyphosate with dicamba between April 16 and May 25; and,
- Requires applicators to provide proof of training to dealers prior to purchasing dicamba in-crop products.

The State Plant Board's March 22nd emergency rule clarified the limited use of the dicamba-containing products for pre-plant (i.e., burndown) between April 16 and May 25 of the 2019 crop year. All half-mile and one mile buffers established by Section XIII.B.2 of the Final Regulation must be applied and maintained during the burndown period.

A copy of the State Plant Board's Final Regulations (including the proposed Emergency Rule) can be found here.

A copy of the State Plant Board's guidance document – Frequently Asked Questions – can be found here.