



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**VIA ELECTRONIC MAIL – CONFIRM RECEIPT REQUESTED**

Jamie Iannone, CEO  
eBay, Inc.  
2025 Hamilton Avenue  
San Jose, California 95125-5904

**Re: Federal Insecticide, Fungicide, and Rodenticide Act  
Amendment to June 10, 2020 Stop Sale, Use, or Removal Order to eBay, Inc.  
EPA Docket No. FIFRA-HQ-2020-5011**

Dear Mr. Iannone:

This letter provides notice that the U.S. Environmental Protection Agency (EPA or “the Agency”) has amended the Stop Sale, Use, or Removal Order, EPA Docket No. FIFRA-HQ-2020-5011, issued to eBay, Inc. (eBay) on June 10, 2020 (the “June 2020 SSURO”). This amendment concerns newly identified pesticide products offered for sale and sold through your eCommerce platform, eBay.com, that are distributed or sold unlawfully, as well as pesticides previously identified in attachments to the June 10, 2020 SSURO. The EPA reserved the right to amend the June 2020 SSURO in paragraph 77 of that order. This amendment requires eBay to immediately stop the sale of pesticides in accordance with the provisions of the Amended Order. The enclosed amendment supersedes and replaces the June 2020 SSURO and is effective immediately upon receipt.

The EPA is amending the June 2020 SSURO because it has identified additional pesticides on eBay.com that the Agency has reason to believe are unregistered and/or misbranded, and that eBay has distributed or sold, and intends to continue distributing or selling in violation of sections 12(a)(1)(A), (E), of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136j(a)(1)(A), (E), which prohibits the distribution or sale of pesticides that are not registered with the Agency and that are misbranded. Further, the EPA has identified new listings for pesticides previously identified in the June 2020 SSURO which indicates that eBay has continued to distribute or sell those pesticides in violation of that order.

In the enclosed amendment, formatting changes had been made to Attachments A, B, and C of the June 2020 SSURO. Where the EPA identified new listings for previously identified pesticides, those new listings have been included and marked with an asterisk. Newly identified pesticides are listed in Attachment D. Pursuant to section 13(a) of FIFRA, 7 U.S.C. § 136k(a), pesticides subject to this amendment may not be distributed or sold except in accordance with the provisions of the order. The issuance of this amendment shall not act as a waiver by the EPA of any enforcement or other authority available to the EPA under federal law, including the EPA’s authority to seek civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the violations alleged in the SSURO or any other violation.

If you have any questions about this matter, you may contact Joseph Varco, Life Scientist, by telephone at (202)564-1791 or by email at [varco.joseph@epa.gov](mailto:varco.joseph@epa.gov), or Christina Cobb, Attorney-Advisor, by telephone at (202) 564-1798 or by email at [cobb.christina@epa.gov](mailto:cobb.christina@epa.gov).

Sincerely,

DIANA SAENZ  Digitally signed by DIANA  
SAENZ  
Date: 2021.06.16 16:18:53  
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Diana J. Saenz, Acting Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement

Enclosure(s)

Cc:

Mike Carson, Director, Global Policy and Regulatory Management, eBay, Inc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
HEADQUARTERS**

|                             |   |                                       |
|-----------------------------|---|---------------------------------------|
| <i>In the Matter of:</i>    | ) | <b>AMENDED ORDER</b>                  |
|                             | ) | <b>SECTION 13(a)</b>                  |
| <b>eBay, Inc.</b>           | ) |                                       |
| <b>2025 Hamilton Avenue</b> | ) | <b>FEDERAL INSECTICIDE, FUNGICIDE</b> |
| <b>San Jose, CA 95125</b>   | ) | <b>AND RODENTICIDE ACT</b>            |
|                             | ) |                                       |
| <b>Respondent</b>           | ) | <b>Docket No: FIFRA-HQ-2020-5011</b>  |
| _____                       | ) |                                       |

**I. AUTHORITIES**

1. The United States Environmental Protection Agency (EPA or “the Agency”) issues this Stop Sale, Use, or Removal Order (“Order”) pursuant to the authority vested in the Administrator of the EPA by Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. § 136k(a), which authorizes the Administrator to issue orders prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe that the pesticide or device, *inter alia*, is in violation of any provision of FIFRA, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provision.
2. This authority has been delegated from the EPA Administrator to the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA), who in turn delegated this authority to the Director of the Office of Civil Enforcement (OCE), who in turn delegated this authority to the Director of the Waste and Chemical Enforcement Division (WCED).<sup>1</sup>

**II. STATUTORY AND REGULATORY BACKGROUND**

3. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it shall be unlawful for any person in any State to distribute or sell to any person—any pesticide that is not registered under section 3 of FIFRA or whose registration has been canceled or suspended.

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<sup>1</sup> EPA Administrator Delegation of Authority 5-12. Issuance of Stop Sale Use or Removal Orders (1200 TN 350 5-12) (Jan 18, 2017); OECA Redefinition 5-12 (January 2017); OCE Redefinition 5-12 (January 2017).

4. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person—any pesticide which is adulterated or misbranded.
5. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), provides that it shall be unlawful for any person—to distribute or sell, or to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) of FIFRA and any regulations thereunder, except that it shall not be unlawful to sell, under regulations issued by the Administrator, a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator.
6. The term “person” is defined as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
7. The term “to distribute or sell” is defined as “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
8. The implementing regulations at 40 C.F.R. § 152.3 further explains that, “[d]istribute or sell’ and other grammatical variations of the term such as ‘distributed or sold’ and ‘distribution or sale,’ means the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”
9. The term “pesticide” is defined as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
10. The term “pest” is defined as “any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1) [of FIFRA].” Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
11. The implementing regulation at 40 C.F.R. § 152.15 further explains that, “[a] pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if: (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise); (1)

That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than: (1) use for pesticidal purpose (by itself or in combination with any other substance); (2) use for manufacture of a pesticide; or (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.”

12. The implementing regulation at 40 C.F.R. § 152.15 provides that, “[n]o person may distribute or sell any pesticide product that is not registered under the Act”, with certain exceptions not applicable here.
13. The regulation at 40 C.F.R. § 168.22 was promulgated to explain the EPA’s policy with regard to enforcing sections 12(a)(1)(A) and (B) of FIFRA; that regulation provides that, “FIFRA sections 12(a)(1) (A) and (B) make it unlawful for any person to “offer for sale” any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. EPA interprets these provisions as extending to advertisements in any advertising medium to which pesticide users or the general public have access.” 40 C.F.R. § 168.22(a).
14. The regulation at 40 C.F.R. § 168.22 provides further that, “EPA regards it as unlawful for any person who distributes, sells, offers for sale, holds for sale, ships, delivers for shipment, or receives and (having so received) delivers or offers to deliver any pesticide, to place or sponsor advertisements which recommend or suggest the purchase or use of...[a]ny unregistered pesticide for any use unless the advertisement is one permitted by paragraph (b) (2) or (3) of this section.” 40 C.F.R. § 168.22(b)(4).
15. Pursuant to Section 2(q) of FIFRA, 7 U.S.C. § 136(q), a pesticide is “misbranded” if, among other things, (A) “its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular,” or if (C) “it is an imitation of, or is offered for sale under the name of, another pesticide.”
16. The term “label” is defined as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” Section 2(p)(1)(A) of FIFRA, 7 U.S.C. § 136(p)(1)(A).
17. The term “labeling” is defined, in part as, “all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device.” Section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A).

18. The regulations at 40 C.F.R. § 156.10(a)(5) provide that a pesticide is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include but are not limited to:
- a. A false or misleading statement concerning the composition of the product (40 C.F.R. § 156(a)(5)(i));
  - b. A false or misleading statement concerning the effectiveness of the product as a pesticide or device (40 C.F.R. § 156(a)(5)(ii));
  - c. Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the Federal Government (40 C.F.R. § 156(a)(5)(v));
  - d. A true statement used in such a way as to give a false or misleading impression to the purchaser (40 C.F.R. § 156(a)(5)(vii));
  - e. Claims as to the safety of the pesticide or its ingredients, including statements such as “safe,” “nonpoisonous,” “noninjurious,” “harmless” or “nontoxic to humans and pets” with or without such a qualifying phrase as “when used as directed” (40 C.F.R. § 156(a)(5)(ix));
  - f. Non-numerical and/or comparative statements on the safety of the product, including but not limited to: (A) “Contains all natural ingredients”; (B) “Among the least toxic chemicals known”; (C) “Pollution approved.” (40 C.F.R. § 156(a)(5)(x)).
19. Pursuant to the authority in section 3(d)(1) of FIFRA, 7 U.S.C. § 136a(d)(1), the Administrator of the EPA may classify a registered pesticide as a Restricted Use Pesticide (“RUP”), a General Use Pesticide, or both.
20. A pesticide is classified as a RUP “if the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered... may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment including injury to the applicator...” Section 3(d)(1)(C) of FIFRA, 7 U.S.C. § 136a(d)(1)(C).
21. Sections 3(d)(1)(C)(i) and (ii) of FIFRA, 7 U.S.C. §§ 136a(d)(1)(C)(i) and (ii), state, in relevant part, that a RUP shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

22. The term “certified applicator” is defined as “any individual who is certified under section 11 [of FIFRA] as authorized to use or supervise the use of any pesticide which is classified for restricted use.” Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1). *See also* 40 C.F.R. § 171.1(b).
23. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), states that it is unlawful for any person to violate any order issued under section 13 of FIFRA.

### **III. BASIS FOR THE ORDER**

24. eBay, Inc., (eBay) is a Delaware corporation with its principal place of business in San Jose, California. Therefore, eBay is a “person” as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
25. This Order refers to eBay and all its divisions, offices, and subsidiaries collectively as “eBay.”
26. eBay owns, operates, and/or controls the interactive e-commerce store located at the domain address [www.eBay.com](http://www.eBay.com) (eBay.com or “the Website”) which allows consumers to shop for and purchase products online.
27. eBay’s revenue comes from listing fees and the final value fees from a successful transaction that it collects from third -party sellers. In exchange for those fees, eBay provides virtual shelf space for consumer products, and engages in retail and marketing activities to ensure successful sales transactions on eBay.com.
28. Beginning in March 2018, the EPA received tips and complaints of pesticides offered for sale on eBay.com and sold to consumers through the Website in violation of FIFRA. Subsequently, the EPA began collecting and reviewing information concerning potentially violative products. As detailed below, the EPA conducted inspections of eBay.com webpages offering the pesticides for sale. The EPA also purchased and analyzed samples of pesticides subject to this Order. The EPA’s review of the information gathered formed the basis for the factual allegations set forth herein and the Agency’s reason to believe that eBay has distributed or sold, and intends to continue distributing or selling, pesticides that are unregistered, misbranded, or that are classified for restricted-use, in violation of FIFRA.
29. Between March 9, 2018 and March 25, 2020, EPA representatives accessed eBay.com and, using keyword searches including “inset gel”, “pest”, “pesticide”, and more recently, “covid” and “human coronavirus”, identified and documented webpages on the Website holding and offering for sale the products identified in Attachments A, B, and C to this Order at the prices specified in those attachments.

30. Between March 29, 2019 and January 1, 2020, EPA representatives accessed eBay.com and purchased one of each of the products identified in Attachment A Table 2 and Attachment C Table 2 through the eBay.com webpages. The EPA representative documented the sales transaction including the purchase made through eBay's shopping cart, eBay's order confirmation, shipping and tracking information, the date the order was received and communications from third-party sellers.
31. Beginning in December 2020, the EPA became aware of certain products on eBay.com that appeared to be pesticides being distributed or sold in violation of FIFRA; the Agency subsequently began collecting and reviewing information concerning those and other pesticides on the Website.
32. Between December 1, 2020 and May 13, 2021, EPA representatives accessed eBay.com and identified and documented webpages on the Website holding and offering for sale the products identified in Attachment D to this Order at the prices specified in that attachment.
33. As set forth below in section IV, eBay's control over and participation in retail and marketing activities on eBay.com constitute distribution or sale as the term "distribute or sell" is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3. Therefore, on multiple occasions between at least March 9, 2018 and March 25, 2020, and December 1, 2020 and May 13, 2021, eBay distributed or sold the products listed in Attachments A, B, C, and D of this Order.

#### Distribution or Sale of Unregistered Pesticides

34. Products listed in Attachment A contain a known active ingredient in pesticides. There is no other significant commercially valuable use, besides use as a pesticide, for products that are sold with the active ingredients listed in Attachment A.
35. The labeling statements for each product listed in Attachments A, B, and D indicate that the products are intended for preventing, destroying, repelling, or mitigating any pest. The products in Attachment B specifically make claims for use against SARS-CoV-2, the virus that causes COVID 19, and/or human coronavirus.
36. Any claim or statement that a product can be used to kill a pest (including SARS-CoV-2 or any other virus) is a pesticidal claim that renders the product a pesticide.
37. Accordingly, the products listed in Attachments A, B, and D are "pesticides" as defined in Section 2(u) of FIFRA and must be registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a. *See also* 40 C.F.R. § 152.15.
38. At no time relevant to this Order were the products listed in Attachments A, B, and D registered with the EPA. Therefore, the EPA has reason to believe that eBay distributed



or sold, and intends to further distribute or sell, the unregistered pesticides in Attachments A, B, and D in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

#### Distribution or Sale of Misbranded Pesticides

39. The labeling for each product listed in Attachment B make claims for use against the virus causing COVID 19 and/or the human coronavirus.
40. A claim or statement that a pesticide can kill a virus, or any other human pathogen, is an efficacy claim that must be evaluated and approved by the EPA.
41. At no time were the product claims for use against the COVID-19 virus and/or the human coronavirus listed in Attachment B approved by the EPA. Accordingly, the claims made for the products in Attachment B are false or misleading and the products are misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).
42. Many of the pesticides listed in Attachment D have labeling with false or misleading statements which are listed in Attachment D. Therefore, these pesticides are misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).
43. Therefore, the EPA has reason to believe that eBay distributed or sold, and intends to further distribute or sell, the misbranded pesticides in Attachments B and D in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

#### Distribution or Sale of Restricted Use Pesticides

44. Each product listed in Attachment C is a pesticide as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), that is registered with the EPA and classified for restricted use under Section 3 of FIFRA, 7 U.S.C. § 136a.
45. At the time EPA representatives identified the webpages offering the products for sale and purchased the products identified in Attachment C Table 2, the EPA representatives were not certified applicators and were not working under the supervision of a certified applicator. The EPA representatives were not required to submit proof of applicator certification or that they were working under the supervision of a certified applicator either before or during the purchasing process.
46. Therefore, the EPA has reason to believe that eBay distributed or sold, or made available for use, and intends to further distribute or sell, or make available for use, the restricted-use pesticides listed in Attachment C in violation of Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F).

#### IV. FACTUAL BACKGROUND

47. To sell or buy on eBay.com, all users must agree to eBay's User Agreement (the "User Agreement"), which governs all seller and buyer activities on the Website. The User Agreement contains eBay's conditions and restrictions on what products may be listed, how products are described, advertised, priced, shipped, how sales transactions are processed, and all communications that occur between sellers and buyers. The User Agreement incorporates all other policies and additional terms posted on eBay's sites, applications, tools, and services. If a seller fails to abide by the User Agreement, by its terms, eBay has the authority to remove listed products, display products lower than other products in search results, and suspend or terminate a seller's account.
48. Section 3 of the User Agreement – *Using eBay* states in relevant part:
- a. "Sellers must meet eBay's minimum performance standards. Failure to meet these standards may result in eBay charging you additional fees, and/or limiting, restricting, suspending, or downgrading your seller account."
  - b. "If we believe you are abusing eBay and/or our Services in any way, we may, in our sole discretion and without limiting other remedies, limit, suspend, or terminate your user account(s) and access to our Services, delay or remove hosted content, remove any special status associated with your account(s), remove, not display, and/or demote listings, reduce or eliminate any discounts, and take technical and/or legal steps to prevent you from using our Services."
  - c. "If we believe you are violating the policy on Offers to buy or sell outside of eBay, you may be subject to a range of actions, including limits on your buying and selling privileges, restrictions on listings and account features, suspension of your account, application of fees, and recovery of expenses for policy monitoring and enforcement. If you are a seller and you offer or reference your contact information or ask a buyer for their contact information in the context of buying or selling outside of eBay, you may be liable to pay a final value fee applicable to that item, even if the item does not sell."
  - d. "Additionally, we reserve the right to refuse, modify, or terminate all or part of our Services to anyone for any reason at our discretion."
49. Section 4 of the User Agreement – *Fees and Taxes* states, in relevant part: "If you are a seller, you are liable for transaction fees arising out of all sales made using some or all eBay Services, even if sales terms are finalized or payment is made outside of eBay. In particular, if you offer or reference your contact information or ask a buyer for their contact information in the context of buying or selling outside of eBay, you may be liable

to pay a final value fee applicable to that item, even if the item doesn't sell, given your usage of eBay Services for the introduction to a buyer.”

50. Section 9 of the User Agreement – *Content* states in relevant part:

- a. “When you provide content using the Services (directly or indirectly), you grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to exercise any and all Intellectual Property Rights (as defined above) you have in that content in connection with our provision, expansion, and promotion of the Services, in any media known now or developed in the future. To the fullest extent permitted under applicable law, you waive your right to enforce your Intellectual Property Rights in that content against eBay, our assignees, our sublicensees, and their assignees in connection with our, those assignees', and those sublicensees' use of that content in connection with our provision, expansion, and promotion of the Services.

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- b. We offer product data (including images, descriptions and specifications) that are provided by third parties (including eBay users). You may use that content solely in your eBay listings. eBay may modify or revoke that permission at any time in our sole discretion. The product data includes copyrighted, trademarked and other proprietary materials. You agree not to remove any copyright, proprietary, or identification markings in the product data and not to create any derivative works based on that data (other than by including the data in your listings).”

eBay’s Participation in Creating Product Listings and Ensuring that Products are Stocked According to its Requirements and Ready for Purchase

51. Section 6 of the User Agreement – *Listing Conditions* states in relevant part: “When listing an item for sale on eBay Services, you agree to comply with eBay's Listing policies and Selling practices policy and that:

- a. Your listing may not be immediately searchable by keyword or category for several hours (or up to 24 hours in some circumstances). eBay can't guarantee exact listing durations;
- b. Your fixed-price listings currently renew automatically every 30 days, based on the listing terms at that time, until the quantities sell out or until you cancel the listing. Effective July 1, 2019, your fixed-price listings may renew automatically every calendar month, based on the listing terms at the time, until all quantities sell or the listing is ended by you or eBay, in its sole discretion,

- c. Content that violates any of eBay's policies may be modified, obfuscated or deleted at eBay's discretion,
  - d. We may revise product data associated with listings to supplement, remove, or correct information,
  - e. We strive to create a marketplace where buyers find what they are looking for. Therefore, the appearance or placement of listings in search and browse results will depend on a variety of factors, including, but not limited to:
    - i. buyer's location, search query, browsing site, and history;
    - ii. item's location, listing format, price and shipping cost, terms of service, end time, history, and relevance to the user query;
    - iii. seller's history, including listing practices, Detailed Seller Ratings, eBay policy compliance, Feedback, and defect rate; and
    - iv. number of listings matching the buyer's query,
  - f. To drive a positive user experience, a listing may not appear in some search and browse results regardless of the sort order chosen by the buyer,
  - g. eBay's Duplicate listings Policy may also affect whether your listing appears in search results.”
52. eBay’s webpage entitled, *No Item Listings Policy*, provides in relevant part: “A listing must offer either a physical item, which includes digitally delivered goods, or a service for sale. Want ads, place holders, or offers to trade are not allowed. Activity that doesn't follow eBay policy could result in a range of actions including for example: administratively ending or canceling listings, hiding or demoting all listings from search results, lowering seller rating, buying or selling restrictions, and account suspension. All fees paid or payable in relation to listings or accounts on which we take any action will not be refunded or otherwise credited to your account.”
53. eBay provides its sellers forms for creating product listings: a quick listing form and an advanced listing form. Sellers must include certain information about a product into the forms before eBay allows the listing including a title, photo, description, price, payment method, and shipping information. Sellers may input the product information or use information from other product listings that are stored in eBay’s Product Catalog.
54. eBay’s webpage entitled, *Selling practices policy*, states in relevant part: “To help you meet our seller performance standards, we have some basic requirements all sellers must meet...Make sure you follow these guidelines. If you don't, you may be subject to a range of actions. We may limit, restrict, or suspend you from buying, selling, or using site features. All of your listings may be removed, displayed lower or not shown in search

results, without refunding any or all applicable fees. You may also forfeit special account status and any discounts. You may be subject to the application of fees and recovery of our expenses in policy monitoring and enforcement.

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You're required to include the following details in your listing: Forms of payment you accept; Return policy; Shipping method, costs, and other information; Taxes and any applicable government imposed fees (such as electronic waste disposal fees); Terms of the transaction

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You're required to meet the expectations you've set in your listing: Ensure the safe delivery of the item within the timeframe stated in your listing; Comply with the [Presale listings policy](#) where applicable; Items you list must be in your inventory or you must have an existing agreement with a third party to fulfill the delivery of the item under the terms of your listing

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You're required to: Specify the condition of the item; Describe any defects or flaws in the item – this helps avoid problems or buyer dissatisfaction; **Note:** When selling a used, refurbished, or flawed item, you must include photos of the actual item for sale instead of a stock photo.”

55. When using the quick listing form, eBay prompts sellers to enter keywords or a product’s UPC/ISBN number into a search box to start the product listing; sellers can also browse categories. Inputting information is to allow eBay to determine which category the item should be listed in. eBay populates categories that most fits the item being sold. For example, entering the keyword “insect gel” results in eBay providing the following categories it deems appropriate:

Home & Garden > Yard, Garden & Outdoor > Garden Décor > Statues & Lawn Ornaments;

Home & Garden > Yard, Garden & Outdoor > Weed & Pest Control > Other Weed & Pest Control;

Home & Garden > Other Home & Garden; and

Home & Garden > Yard, Garden & Outdoor > Weed & Pest Control > Insect & Grub Control > Insecticides

56. eBay then shows sellers other listings of products that are selling on the Website that have been deemed similar to the keyword entered into the search box. eBay directs sellers to select the product that is most similar to the product being sold. eBay then copies the details into the seller’s listing. For example, using the keyword “inset gel” resulted in

eBay.com providing the following similar product: Cannibal 80 Gr Cockroach Poison, which is a pesticide not registered with the EPA. *See Attachment A.*

57. After clicking on the similar product, sellers are directed to select the condition of the product, as either “new, new other (see details), used, or for parts or not working.” eBay then redirects the seller to a webpage entitled “Create your listing” that eBay automatically populates with information from the similar product listing. Sellers must opt out of information being prefilled into the form.
58. When using the advanced listing form, eBay directs users to click the link “Create a template.” Users may input product information or use information from other product listings that are stored in eBay’s Product Catalog.
59. The eBay.com webpage entitled, *Listing your item with details from our catalog* provides that:

“You can create professional listings—and speed up the process—by using details and stock photos from the eBay catalog. Our catalog is an online library of details and images for products across a wide range of categories. When you list using our catalog, product information like brand, model number, dimensions, color, capacity, compatibilities, and professional photos can be automatically included in your listing.

- a. Adding details from our catalog  
Pre-filling your listing with product details and photos from our catalog is easy. To add details:
  1. Enter the UPC, ISBN, part number, or the product name of your item in the [listing form](#).
  2. If the product is in our catalog, you’ll see similar products.
  3. When you find the matching product, select See details to view the item information or choose Select to add the information to your listing.

If you’d like to remove the details, simply uncheck the Prefill this listing with eBay catalog info box at the top of the page.”

60. The listing formats available for both listing types include a fixed-price listing format, an auction-style format, or a “Buy-It-Now” format that mixes the fixed-price and auction style formats. The Buy-it-Now format lets buyers purchase products immediately. eBay requires that the Buy-it-Now price in an auction-style listing be at least 30 percent higher than the starting price.

61. All pesticide products listed in Attachments A, B, and C, were offered at the Buy-it-Now price set forth in those attachments.
62. As detailed above, eBay sets the terms for product listings with its listing requirements and provision of product information. eBay then shelves products into specific categories. eBay is directly involved in creating product listings, stocking products, and ensuring that consumers can access and in fact purchase products.

#### eBay's Activities to Ensure Successful Sales Transactions

63. eBay participates in product promotion by providing its sellers with:
  - a. Best Match search system: an algorithm that ranks eBay sellers and their listings based on the seller's use of eBay's "best practices". The ranking system and algorithm push a seller's products to the tops of buyers' searches while pushing other sellers lower in the search results. On the eBay.com webpage entitled *Optimizing your listings for Best Match*, eBay provides in relevant part:

"There's no secret to improving your position in the Best Match sort order. Sellers who follow best listing and selling practices will see their items appear higher in the search results."
  - b. Promoted listings: an advertising feature where sellers pay a fee for eBay to boost their item from its normal position in search results to the top of search results.
  - c. Promotions Manager: eBay's central hub that allows eBay Store subscribers to provide special offers on products including order discounts, codeless vouchers, promotional postage, sales events, and volume price discounts.
  - d. Terapeak: eBay's tool that sellers use to research competitor sellers. Terapeak uses recent eBay supply, demand, and pricing data to guide sellers on what to sell, when to sell it, and at what price.
64. eBay takes part in the management of product inventory and orders by providing its sellers with the following:
  - a. The eBay Seller Hub: a centralized portal where eBay provides retail and marketing tools, listing guidance, reports and other tools to sellers.
  - b. Selling Manager: an eBay tool to create listings in bulk or individually; perform post-sales tasks – like leaving feedback, sending emails to buyers, and printing

shipping labels – in bulk; and view archived records of listing and sales activity. For a fee, sellers can access Selling Manager Pro which provides additional reporting, inventory management, and automation features.

- c. Sales Reports: an eBay tool that provides sellers with information on total sales, successful listings, average sale price, month-to-month sales growth, and the seller's fees. Reports remain available for sellers on eBay.com for six months. For a fee, sellers access Sales Reports Plus, which provides additional features including viewing sales by product category, selling format and ending time, and any unpaid item activity. Sales Reports Plus remain available to sellers on eBay.com for two years.
65. eBay participates in sales transactions and order fulfillments by providing product shipping, customer service, and payment on eBay.com including:
- a. UnPaid Item Assistant, a program in which eBay automatically opens and closes cases on sellers' behalf for unpaid items.
  - b. Online payment methods including PayPal, direct debit, credit cards. eBay may place holds on payments if a buyer reports an issue with a transaction or if the seller is a new seller who has not established a selling record. eBay may also place holds for established sellers based on the seller's rating on eBay.com.
  - c. Managed Payments, a payment processing service where eBay handles all parts of the payment transaction. Once a buyer completes a transaction on eBay.com, eBay processes the payment and then eBay deposits funds into the seller's bank account.
  - d. Collection of sales taxes for each sale.
  - e. Purchase and print shipping labels within eBay.com, which automatically marks the product as shipped and provides tracking information. eBay provides sellers with negotiated postage rates from its partnership with the United States Postal Service, United Parcel Service, and FedEx.
66. eBay's product marketing and promotion, inventory management, and order processing and fulfillment are performed to ensure successful sales transactions on eBay.com.

#### eBay's Activities to Advertise Products



67. eBay advertises products listed on eBay.com to prospective buyers on its Website; the advertisements appear on its Website and on other external websites. The eBay webpage, *AdChoice - eBay Advertising Preferences* provides in relevant part:

“In order to show customized ads we think you'll find interesting on and off our affiliated properties, we may use information you make available to us when you interact with our sites, content or services. You have the ability to opt out of these customized ads at any time. Please keep in mind if you opt out, you'll still see ads, but they won't be tailored to your interests based on your eBay activity”

The webpage, *Cookies & Similar Technologies* provides in relevant part:

“When you visit or interact with our sites, services, applications, tools or messaging, we or our service providers may use cookies, web beacons, and other similar technologies for storing information to help provide you with a better, faster, and safer experience and for advertising purposes.

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Service providers are companies that help us with various aspects of our business, such as site operations, services, applications, advertisements and tools. We use some authorized service providers to help us to serve you relevant ads on our services and other places on the internet. These service providers may also place cookies on your device via our services (third party cookies). They may also collect information that helps them identify your device, such as IP-address or other unique or device identifiers.”

68. Under the section entitled, *Our uses of such technologies fall into the following general categories*, it provides in relevant part:

“Advertising or Targeting Related. We may use first-party or third-party cookies and web beacons to deliver content, including ads relevant to your interests, on our sites or on third party sites. This includes using technologies to understand the usefulness to you of the advertisements and content that have been delivered to you, such as whether you have clicked on an advertisement.”

69. eBay sends notifications about products to prospective buyers via email and/or internet browser notifications for them to keep track of their eBay activity without having to be on eBay.com.
70. On a product’s webpage, eBay provides buyers with *related items to consider* which are other products offered for sale on eBay.com that are deemed akin to the product being viewed.

71. Based on the above, eBay engages in holding and offering products for sale on eBay.com and its activities induce the sales of pesticide products on the website. Therefore, eBay's actions meet the definition of "to distribute or sell" as that term is defined by section 2(gg) of FIFRA, 7 U.S.C. § 136gg. 40 C.F.R. § 152.3.

## V. ORDER

72. Pursuant to the authority of section 13(a) of FIFRA, 7 U.S.C. § 136k(a), the EPA hereby orders eBay to **immediately stop** the distribution and sale of the pesticides listed in Attachments A, B, C, and D (collectively, "the Violative Products"), including those listed under different eBay item numbers, under its ownership, control, or custody, wherever such products are located on eBay.com, except in accordance with the provisions of this Order.
73. This Order extends to all quantities of the Violative Products currently offered for sale or held for sale on eBay.com. The Violative Products shall not be used, sold, offered for sale, held for sale, shipped, delivered for shipment, received, or having so received, shall not be delivered, or offered for delivery.
74. eBay may assert a business confidentiality claim covering all or part of the above information requested, in the manner described by 40 C.F.R. § 2.203(b). You should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. If no such claim accompanies the information when it is received by the EPA, the information may be made available to the public by the EPA without further notice.
75. eBay may seek Federal judicial review of this Order pursuant to section 16 of FIFRA, 7 U.S.C. § 136n. The issuance of this Order shall not constitute a waiver by the EPA of its remedies, either judicial or administrative, under FIFRA or any other Federal environmental law to address this matter or any other matters or unlawful acts not specified in this Order.
76. This Order shall be effective immediately upon receipt by eBay or any agents of eBay.
77. This Order shall remain in effect unless and until revoked, terminated, suspended, or modified in writing by the EPA.
78. If any provision or provisions of this Order is/or are subsequently held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and they shall remain in full force and effect.

79. The EPA may amend this Order and its attachments at any time to include additional pesticides that the EPA has a reason to believe eBay is distributing or selling, or intends to distribute or sell, in violation of FIFRA.

## VI. OTHER MATTERS

80. For any additional information about this Order, please contact Joseph Varco, Life Scientist at (202) 564-1791. For any legal matters concerning this Order, you may contact Christina Cobb, Attorney-Advisor, at (202) 564-1798.

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Date

**DIANA SAENZ** Digitally signed by DIANA SAENZ  
Date: 2021.06.16 16:12:41 -04'00'

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Diana J. Saenz, Acting Director  
Waste and Chemical Enforcement Division