

for a redress of grievances”⁴ (a/k/a “lobbying”). They can. Neither is it aimed at suppressing or burdening the protected speech of some limited subset of trade associations. Rather, the central question here is the same one present in so many of the cases before an economic regulator such as FERC, and that is the less headline-grabbing, albeit critically important, question: *Who pays?*

4. Relevant to the “who pays?” question is the type of business. A business in a competitive market has a First Amendment right to spend its own money on speech, including lobbying the legislators who pass laws that affect it. These activities may be aimed at rent-seeking through regulation or subsidies (or seeking protection from other special interests’ rent-seeking). James Madison made it clear in *The Federalist No. 10* that special interests (“factions”) would always seek to gain advantage at the expense of others through the political process; but it was also Madison who authored the First Amendment that protected the freedom of all to pursue their interests in the public arena, and left it up to (hopefully) *public*-spirited legislators—elected by the *public*—to protect the *public* interest from the special interests (including those claiming to represent the public interest) and their rent-seeking behavior.

5. Privately-owned businesses get funds from two primary sources: (i) Investors who put up capital; and (ii) customers who purchase its goods and/or services. A company that holds a state-granted and state-protected monopoly franchise is fundamentally different, however, from a business in a competitive market, not in its First Amendment rights, but in how it can pay for certain activities. Unlike the business in a competitive market whose customers *voluntarily* choose to purchase its products over the products of its competitors, the state-protected monopoly gets its money from captive customers who have *no choice* but to purchase, for example, electrical power, a vital necessity of modern life, from the monopoly. The state-protected monopoly is also guaranteed recovery of its prudent costs incurred to serve the public (hence the term “public service company,” or “public service corporation,” defined terms typically applicable to public utilities under many state laws).⁵ The question asked herein, therefore, is which of its costs should be charged to investors, who have voluntarily invested in the company, and which to captive customers, who have no choice but to

purchase an essential product such as electricity from it.⁶

6. Nothing keeps the monopoly from spending money on First Amendment protected speech, including lobbying legislators and related public-relations activities, but its investors should pay those costs, *not* captive customers.⁷ That is the issue implicated by this NOI, which seeks to better understand whether costs permitted to be “above the line” (chargeable to customers) and those required to be “below the line” (chargeable to investors) for privately-owned companies are being treated as such on a transparent and consistent basis.

7. While in a typical rate proceeding, the opposing parties bear the initial burden of challenging the accounting or rate treatment of “above the line” or “below the line” expenses, under section 205 of the Federal Power Act, the ultimate burden has always been on the regulated public utility to demonstrate the justness and reasonableness of its proposed rate. Based on the record before us, and the Commission audit staff’s own experience, it may be that the Commission, customers, and other interested parties are not able to access the information necessary to determine whether the costs included in a jurisdictional utility’s rates are appropriately classified. The questions raised in the NOI relate to issues squarely within, and essential to, the Commission’s jurisdictional responsibilities to ensure just and reasonable rates.

8. *Let me also emphasize:* It may well be that the Commission’s existing rules, regulations and precedent are sufficient to ensure the just and reasonable allocation of such costs, but it is worth reviewing. As always with energy regulation, the devil is in the details.

9. On a more specific topic, I also support asking whether it is time to clarify our regulations or further codify what is now established primarily through Commission precedent, *i.e.*, not allowing a monopoly to recover from customers the costs of its contributions and grants to charitable and civic organizations. Giving away other people’s money is not altruism.

For these reasons, I respectfully concur.

Mark C. Christie,
Commissioner.

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⁶ This analysis applies to privately-owned companies, not publicly-owned or government-owned providers or co-operatives.

⁷ Legal fees are a more complicated matter.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0082; FRL–9365–01–OCSPP]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request (December 2021)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA’s receipt of application 91868–EUP–R from Biotolys NV, Buchtenstraat 11, requesting an experimental use permit (EUP) for the ASFBIOP01–02. The Agency has determined that the permit may be of regional and national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2021–0082, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Ann Overstreet, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: BPPDFRNotices@epa.gov; Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: RDFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

⁴ U.S. Const. Adt. 1.

⁵ See, e.g., Va. Code § 56–1 *et seq.*

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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](https://www.regulations.gov) or email. 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 preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. **Environmental justice.** EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or

more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Submitter: Biotalys NV, Buchtenstraat 11, 9051 Sint-Denijs-Westrem, Belgium. **Experimental Use Permit Number:** 91868–EUP–R. **Docket ID Number:** EPA–HQ–OPP–2021–0685. **Pesticide Chemical:** ASFBIOF01–02.

Summary of Request: Biofungicide for treatment of plant diseases on grapes and strawberry food crops. **Quantity of pesticide:** 174 pounds. **Total acreage:** 235 acres treated over a two-year period. **Location of area of application:** California, Florida, Oregon, and Washington states. **Contact:** BPPD.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 14, 2021.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2021–27902 Filed 12–22–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0080; FRL–8795–06–OCSP]P]

Pesticide Product Registration; Receipt of Applications for New Uses—December 2021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the File Symbol of the EPA registration Number of interest as

shown in the body of this document, by one of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/where-send-comments-epa-dockets>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets/about-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Marietta Echeverria, Registration Division (7505P), main telephone number: (703) 305–7090, email address: RDFRNotices@epa.gov. The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

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](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI