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Susan Bartow  
Chemical Review Manager, Pesticide Reevaluation Division  
Office of Chemical Safety and Pollution Prevention  
Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

[Via Regulations.gov](https://www.regulations.gov)

**Re: Comments to the U.S. Environmental Protection Agency on the Advanced Notice of Proposed Rulemaking, Docket ID No. EPA-HQ-OPP-2023-0420, 88 Fed. Reg. 70625 (Oct. 12, 2023)**

Dear Ms. Bartow:

The National Association of State Departments of Agriculture (NASDA) appreciates the opportunity to provide these comments to the U.S. Environmental Protection Agency (“EPA” or the “Agency”) on EPA’s October 12, 2023 Advanced Notice of Proposed Rulemaking (“ANPR”) concerning the Agency’s approach to regulation of seeds treated with a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136 et seq. *Pesticides; Review of Requirements Applicable to Treated Seed and Treated Paint Products; Request for Information and Comments*, 88 Fed. Reg. 70,625 (Oct. 12, 2023).

NASDA represents the commissioners, secretaries, and directors of the state departments of agriculture in all 50 states and 4 U.S. territories. State departments of agriculture are responsible for a wide range of programs, with conservation and environmental protection among our chief responsibilities. In 43 states, the state departments of agriculture are co-regulators with EPA. They are responsible for administering, implementing, and enforcing the production, labeling, distribution, sale, use, and disposal of pesticides under the FIFRA.

### **Benefits to Agriculture**

Seed treatments offer considerable benefits for U.S. agriculture by providing precise application of biological organisms, products, and/or chemical ingredients to suppress detrimental pests and pathogens during a key developmental stage in a plant’s lifecycle. Protecting seeds by suppressing pathogens, insects, or other pests fosters plant viability and health from the moment it is planted through its development. Seed treatments can also greatly reduce off-target exposure and reduce the overall pesticide application that a crop will experience by minimizing the need for traditional broadcast sprays.

### **Support for FIFRA Risk Assessment Process**

NASDA supports the scientifically-sound development, review, registration, and re-registration of crop protection technologies under the comprehensive regulatory framework FIFRA provides. As a part of the FIFRA regulatory process, the Agency is directed to ensure that, among other things, using a pesticide

according to specifications “will not generally cause unreasonable adverse effects on the environment,” while considering the economic, social, and environmental costs and benefits of the use of any pesticide.

Treated seeds are included as part of the required review for registered pesticide products, where the EPA conducts thorough assessments of the use of the registered pesticide as a seed treatment and, ultimately, the use of treated seed. This robust risk assessment includes consideration of the exposures and impacts that will result from growers utilizing treated seeds on their operations. Under FIFRA section 25(b)(2) treated seeds are included under a “treated articles and substances” exemption, meaning that treated seeds have been determined to be of “a character which is unnecessary” to be under FIFRA authority.

### **Enforcement Clarity**

Following the regulatory findings at the EPA, information is translated onto a seed tag. At this point, the seed becomes subject to regulation by the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) under the Federal Seed Act (FSA). Under FSA, it is unlawful “to transport or deliver for transportation in interstate commerce,” or to import into the United States, treated seeds unless the container bears a label (i) stating that the seeds have been treated; (ii) identifying the commonly accepted name of the chemical substance used to treat the seed, (iii) including any appropriate cautionary statements concerning its use, and (iv) describing any process used in such treatment.

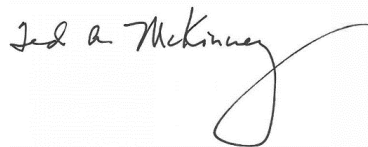
State pesticide regulatory officials raised legitimate questions requesting clarity on the enforceability of seed tags, particularly surrounding statements for use restrictions in a letter to the EPA. In our view, USDA should be the federal agency meeting with state pesticide regulatory officials because questions on enforceability of existing requirements falls under USDA-AMS jurisdiction through the Federal Seed Act and not the jurisdiction of the EPA.

### **Conclusion**

NASDA looks forward to continuing conversations with the Agency to ensure that access to this important technology is maintained and questions regarding enforcement authority are addressed to the appropriate officials at USDA AMS under the Federal Seed Act.

Should you have any questions, please contact Josie Montoney-Crawford, Associate Director of Public Policy, at [josie.montoney-crawford@nasda.org](mailto:josie.montoney-crawford@nasda.org). Thank you for your consideration of our comments on this important topic.

Sincerely,



Ted McKinney  
Chief Executive Officer  
NASDA