



February 09, 2024

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.epa.gov/regulations)

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 Biological Products Industry Alliance (“BPIA”) 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).

BPIA promotes the responsible development of safe and effective biological products including biopesticides, biostimulants, and biofertilizers. These beneficial tools are used in a variety of settings, including commercial agriculture, forestry, golf courses, home gardens, horticulture, and ornamentals. BPIA also supports public health through education, outreach, and advocacy activities at the state, federal, and international levels. BPIA’s membership includes both large and small producers of biological pest control products.

In the ANPR, the Agency has requested comment on whether “a FIFRA section 3(a) rule and/or other administrative action [was] necessary or appropriate to prevent unreasonable adverse effects on human health and the environment,” including “to allow for enforcement of certain use instructions on labeling of treated seed and treated paint as an alternative to registration of such products.” *Id.* at 70,627. The ANPR further asks for comments on how the Agency can “improve labeling on both treating pesticide labeling and labeling on treated seed products (e.g., seed bag tags) during registration and registration review processes,” as well as the “use and usage of treated seed products, including storage, planting, and disposal of treated seed, and on whether or to what extent treated seed products are being distributed, sold, and/or used contrary to treating pesticide labeling instructions for each separate crop seed product.” *Id.* at 70,626. “[T]he

Agency is seeking any specific information from all stakeholders to further inform . . . whether there are specific cases of use contrary to label instructions.” *Id.*

All pesticides approved for use as seed treatments in the United States are subject to rigorous, scientifically robust review under FIFRA and the Federal Food, Drug, and Cosmetic Act (“FFDCA”). Seeds treated with pesticides that have undergone this rigorous review, in order to protect the seeds and the resulting plant from pests, have long been interpreted by EPA to be “of a character which is unnecessary” to be subject to FIFRA in order to carry out FIFRA’s purposes, and thus exempt from registration under FIFRA’s Treated Article Exemption. The narrow criteria of the Treated Article Exemption, which already limits its application to treated seeds used in accordance with the registered pesticide product label, makes any further rulemaking unnecessary to prevent “unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits” of the product. 7 U.S.C. § 136(bb). BPIA notes that it supports and asks that the Agency carefully review comments on the ANPR submitted by the American Seed Trade Association, CropLife America, and The Agricultural Retailers Association, which have been filed separately.

Again, BPIA appreciates the opportunity to provide these comments on the ANPR and in support of the Treated Article Exemption with respect to pesticide-treated seed. Should EPA have any questions or wish to discuss these issues further, please do not hesitate to contact us.

Sincerely,

BIOLOGICAL PRODUCTS INDUSTRY ALLIANCE



Keith J. Jones
Executive Director