

**State Lead Agencies Issues with Treated Seed Regulation**  
**Region 2 States Issue Topic**  
**SFIREG Meeting**  
**December 6 – 7, 2021**

**Introduction**

State Lead Agencies (SLA's) for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in Region 2 states were receiving numerous inquiries and complaints leading up to the December 2020 SFIREG meeting about the current regulation and potential impacts of pesticides related to treated seeds. There were concerns about numerous aspects of treated articles including neonicotinoid treated seeds. This issue was brought forward for the December 2020 SFIREG meeting, additional research and input was obtained from the SFIREG Joint Working Committees of EQI and POM, and the issue topic has been revised for the December 2021 SFIREG Meeting.

Concerns have been raised about how states regulate pesticide seed treatments known as "Treated Articles", and in particular the use of treated seeds and potential impacts from residues under state and federal laws and rules. Currently SLA's look to existing state and federal law that may guide regulation of treated seeds. In general the EPA considers pesticide treated seeds to be a pesticide product, but exempts them from regulation under FIFRA, 7 U.S.C. §§ 136-136y, where:

- All pesticides sold or distributed in the US must first be registered with the EPA,
- FIFRA defines a pesticide as including any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, 7 U.S.C. § 136(u),
- EPA may exempt a pesticide from FIFRA's requirements if it determines that regulation of the pesticide is unnecessary, including to regulate for the purposes of the prevention of unreasonable environmental harm, 7 U.S.C. § 136w(b),
- The EPA exemption of "Treated Articles" and treated seeds leaves the states with a regulatory gap related to complaints, questions, and potential lawsuits.
- There are a variety of pesticide active ingredients utilized for treated seeds, and often neonicotinoid active ingredients become the focus of questions and potential concern.
- The main neonicotinoid products registered for seed treatments are acetamiprid, clothianidin, imidacloprid, and thiamethoxam.

**Key Questions**

- The utilization of pesticide treated seeds is a beneficial practice and vital for crop production for many commodities.
- However, as Region 2 SLA's and other states around the nation have discovered, treated seed dust and drift issues can pose risk to pollinators and the environment.

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- Aerial drift of seed treatment dust can be generated during treatment and planting.
- Environmental concerns are becoming very common as there are concerns on potential impacts to native and managed pollinators.
- While treating seeds with insecticides is vital for protecting seeds and emerging crops during the early growing season, and can reduce impacts to applicators and the overall environment through the reduced risk theories of treating seed, there becomes a potential wide-scale impact to beneficial insects, pollinators, aquatic systems, and the environment from the dust generated during planting and also from any remaining residues in soils.
- Without the ability to regulate treated articles, SLAs are left to rely upon education, training, extension and involvement, Integrated Pest Management (IPM) and Stewardship Strategies.
- The EPA regulatory exemption of treated seeds leaves SLA's with state programmatic and regulatory gaps, the burden of creating education and extension programs, and the impacts of responding to complaints and potential lawsuits.
- SLA's may struggle to have the funding and personnel to respond to the complaints and gaps in regulations; adequately instruct applicators and mixers to properly follow the directions on the treated seed bags; and suitably inform and educate applicators on understanding the hazard statements related to pollinators, non-target organisms, and aquatic systems.
- Managing treated seed is often complex and can involve education, IPM, and ensuring planting equipment is functioning and properly calibrated and maintained. Application lubricants can cause complications and should be chosen carefully to reduce treated seed abrasion increasing dust.
- Prevention of treated seed impacts can be complicated by weather conditions during planting especially related to humidity, temperature, and wind. Understanding the location and proximity to pollinator habitat and activity is also very important as is the proximity to sensitive habitats and aquatic systems.
- The application issues of treated seed dust, pesticide residues in soils and runoff, and managing spills are all complex and important issues for SLAs as concerns and complaints have increased for Region 2 states and other states around the country.
- Use of subsurface tile drainage is a common practice in mid-west states to drain excess water from fields. Neonicotinoid contaminated effluent from subsurface tiles may contaminate surface waters.
- Disposal of waste treated seed is a complex issue. Common recommendation to dispose of leftover treated seed is to plant it on fallow ground or an unused parcel of land. However, this may not be practical, especially with large quantity of left-over seed.

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- Pesticide treated seed is often classified as nonhazardous waste and may be disposed in landfills in some states. However, disposal of bulk treated seed in landfill is costly and usually not practical for large volumes of treated seed.
- There are concerns about treated seeds being given away or sold to the general public and utilized to potentially feed wildlife and farm animals.
- Disposal of used seed bags may contain treated seed dust or leftover treated seed.

**SFIREG Discussion:**

- Region 2 SLAs recommend that SFIREG discuss the “Treated Article” FIFRA exemption issue with regards to treated seeds, and consider this topic as an Issue Paper.
- Are these issues occurring with other states around the nation? Are the SLA authorities and approaches used adequate to handle the treated seed impacts due to the “Treated Article” exemption?
- Should treated seed regulation be changed at the EPA level or will SLAs continue to deal with these issues state by state and respond to complaints, lawsuits, and the burden of providing education, training, extension, and stewardship solutions?
- Because the EPA exempts the regulation pesticide-treated seeds, it leaves each state to determine how to create appropriate responses, laws, rules, and management.
- Without uniform and comprehensive approaches under a regulatory environment for treated articles, the SLAs are burdened in numerous ways and can have difficulty creating programs and restrictions necessary to protect pollinators, the environment, wildlife, and human health where treated seed issues may cause a variety of issues including environmental contamination.
- The treated seed and treated article topic is currently an issue topic within SFIREG.
- Additional input was provided by SFIREG EQI and POM during 2021.
- Does SFIREG recommend to elevate this issue topic to an “Issue Paper” where an official paper and letter would be provided to EPA, after any additional background research and clarification of remedies and timelines are included?