Treated Seed Petition Background

Background

- On April 25, 2017, EPA received a petition filed by the Center for Food Safety (CFS) with and on behalf of the following groups and associations:
  - Beekeepers (Bret Adee, American Beekeeping Federation, American Honey Producers Association, Jeff Anderson, David Hackenburg, and Pollinator Stewardship Council)
  - Farmers (Lucas Criswell, Gail Fuller)
  - Public Interest Organizations (American Bird Conservancy, Center for Food Safety, Pesticide Action Network of North America)
- Petition to:
  - Amend 40 CFR 152.25(a), "the treated article exemption," to clarify that it does not apply to seed for planting coated with systemic pesticides since the pesticides are intended to kill pests of the plant instead of pests of the seed itself[1]; or
  - Publish a final, formal Agency interpretation in the Federal Register stating that EPA interprets the exemption in 40 CFR 152.25(a) not to apply to systemic pesticide-coated seeds; and
  - Enforce FIFRA's registration and labeling requirements for each systemic pesticide-coated seed product.
- The petition addresses coated seeds in general but gives examples specific to the neonicotinoids.
- Petitioners argue that:
  - The majority of coating chemicals are not intended to protect the seed itself but rather the growing plant as they are systemic and are absorbed into the plant's circulatory system.
  - "For many coated crop seeds, the coatings are abraded off of the seed as dust or are sloughed off the seed into the surrounding soil … [contaminating] the air, soil, marginal vegetation, and waters."
  - "The Agency has failed to adequately assess the risks of unregulated seeds, instead exempting them from registration or labeling requirements and only registering the liquid coating products."
  - "EPA's actions and inactions have led to excess bee colony mortality, declines in native bees, increased bird mortality, nationwide soil and water contamination, contaminated marginal vegetation and other environmental and economic harms, thereby severely damaging the Beekeeper Petitioners' businesses, while also damaging the land and welfare of the Farmer Petitioners and damaging the interests of the Public Interest Organization Petitioners."

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[1] Proposed amendment for 40 CFR 152.25 (shown in red). **Treated articles or substances**. An article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation, but excluding seeds for planting coated with a systemic pesticide intended to kill pests of the plant) if the pesticide is registered for such use.

- On December 26, 2018 the Agency, through a Federal Register Notice (83 FR 66260), announced the availability of the petition for a 60-day public comment and posted it in the docket (EPA-HQ-OPP-2018-0805). The comment period was extended for an additional 30 days and closed on March 26, 2019.
- EPA received 98 submissions of comments on the petition, with 73 against the registration of treated seeds and 25 in favor of registration. The comments against registration are primarily from grower groups, registrants, and the USDA, while the comments in favor of registration are from environmental groups, beekeepers, and the New York Attorney General. [A summary of these comments is provided in the "Additional Information" section.]
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Deliberative Process / Ex. 5

Additional Information

Regulatory History of Treated Seeds:

- Section 152.25(a) provides an exemption from all requirements of FIFRA (i.e. registration and labeling) for qualifying articles or substances treated with, or containing a pesticide, if:
    - the incorporated pesticide is registered for use in or on the article or substance, and;
    - the sole purpose of the treatment is to protect the article or substance itself.
- 2000 – "*Harmonization of Treated Seed Policies and Requirements in Canada and the United States*" policy document clarifies that seeds for planting which are treated with pesticides registered in the U.S. are exempt from registration as pesticides where: "for the protection of the [seed] itself means that the pesticidal protection imparted to the treated seed does not extend beyond the seed itself."
- 2012 – CFS petition to suspend clothianidin received March 20th, 2012—partial response denied the petition published July 19, 2012. There was a public comment period held from 07/27/2012 to 09/25/2012 receiving more than 236,000 comments. This petition will be responded to following the publication of the neonicotinoid Registration Review Interim Decisions.

Summary of Public Comments in Favor of the Registration of Treated Seeds

- Treated Seeds with neonicotinoid pesticides are rendered fundamentally different from other seeds and there is little research as to the effect of this widespread use of these chemicals.
- The pesticidal effect of the scraped, blown, and sloughed off neonicotinoid coatings extend beyond the seed and get into the environment.
- EPA has failed to fully assess the effect of these systemic insecticides.
- Neonicotinoids and treated seeds are dangerously overused and have negative effects on a variety of species.
- The use of these chemicals, particularly on corn and soybeans, is resulting in pesticide contamination extending past the fields affecting bee productivity and reproduction rate.
- These neonicotinoid chemicals affect non-target animals including a number of threatened and endangered species.
- Use of neonicotinoid coated seeds actually provides no net yield benefit to farmers across the majority of crop planting contexts.
- These water-soluble chemicals are being found at high levels in aquatic systems in the United States.
- The bag and tag labels for seeds is inadequate to reduce or mitigate the harm caused by neonicotinoid dust and talc, or the grown plants themselves, to honey bees.
- EPA and USDA have already stated the danger that these coated seeds have on the environment.
- EPA's exemption of coated seeds is unlawful, and they have the authority and duty to regulate coated seeds under FIFRA.

Summary of Public Comments Against the Registration of Treated Seeds:

- If these treated seeds are registered it will lead to greater foliar insecticide use.

- Registering these treated seeds is redundant because EPA already has regulations regarding their use.
- With registration there would be an increase in price, bureaucracy, and paperwork for applicators and farmers diminishing the efficiency of treated seeds.
- The plant that grows from the embryo is considered part of the seed and it is therefore a treated article.
- There are significant benefits to seed treatment in early development, overall crop yields, and the amount of chemical used.
- Registration would have little to no positive impact on human health or environmental safety.