

Testimony of
The Honorable Gary W. Black, Commissioner of Agriculture, State of Georgia
On behalf of the National Association of State Departments of Agriculture

As submitted to the U.S. Senate Committee on Agriculture, Nutrition, and Forestry Public Hearing on Pesticide Registration under the Federal Insecticide, Fungicide, and Rodenticide Act: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act.

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328A Russell Senate Office Building

Chairman Roberts, Ranking Member Stabenow, and distinguished members of the Committee, thank you for the invitation to testify today on behalf of the National Association of State Departments of Agriculture (NASDA) and the Georgia Department of Agriculture on the pesticide registration process. I appreciate the opportunity to share a state agency perspective on this important topic. My name is Gary Black, and I proudly serve as Georgia's Commissioner of Agriculture and NASDA member as an ambassador, advocate, regulator, and educator.

NASDA

NASDA represents the commissioners, secretaries, and directors of the state departments of agriculture in all fifty states and four territories. State departments of agriculture are responsible for a wide range of programs including food safety, combating the introduction and spread of plant and animal diseases, and fostering the economic vitality of our rural communities. Environmental protection and conservation are also among our chief responsibilities.

In forty-three states and Puerto Rico, the state department of agriculture is the state lead agency responsible for administering and enforcing the labeling, distribution, sale, use and disposal of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)¹. Georgia is one of those forty-three state agencies with FIFRA responsibilities and serves as a co-regulatory partner with the U.S. Environmental Protection Agency (EPA) on the delivery and enforcement of pesticide programs and activities.

¹ 7 U.S.C. §136, *et. seq.*

Georgia Agriculture

I am proud of the fact that Georgia has a rich history in production agriculture. Some would even say that it is in our name. For you see the name “Georgia”, the feminine version of George, truly means “a farmer”, or “worker of the land”. In fact, the first crop of soybeans in North America was harvested on Skidaway Island in 1765. Today we are better known as world leaders in the production of poultry, peanuts, pecans, cotton, forest products and our famous sweet Vidalia onions. Our agricultural economy continues to thrive representing a \$75 billion annual economic impact to our state’s economy and serves as our largest industrial sector.

The diversity of our agricultural production is equally reflected within our agency’s Plant Industries Division. The Georgia Department of Agriculture routinely register approximately 15,000 pesticide products annually and issues license to over 30,000 certified pesticide applicators. Through our cooperative agreement with EPA we make every effort to provide unmatched education and regulatory oversight to our agricultural producers and pest management professionals. The regulatory burden over the last decade has put considerable stress on our agency, our land grant university system and partnering stakeholders who are charged with pesticide registration and enforcement.

Relationship between EPA and the Agriculture Community

It is no secret that we have experienced a number of significant challenges between the agriculture community and the EPA over the recent years. I want to start by acknowledging the tremendous efforts by newly appointed EPA Administrator Scott Pruitt to improve this relationship. From his meeting directly with several of my colleagues in NASDA; to offering public remarks at the national meetings of various agriculture producer organizations; and countless other efforts all within his first few weeks at the helm, Administrator Pruitt has demonstrated genuine respect and appreciation for the hard-working women and men who feed and clothe us. While we are still working with EPA to address several remaining regulatory challenges and process improvements, we see these efforts as a badly needed reboot of our relationship with EPA, and we applaud the Administrator’s efforts in delivering a transparent, predictable, and science-based regulatory approach to protecting human health and the environment while allowing for the production of the world’s safest, most abundant, and most

affordable food supply. The FIFRA registration process and the Registration Improvement Act (PRIA) are cornerstones to this essential regulatory foundation.

Cooperative Federalism

Among NASDA's highest priorities is the pursuit to codify and institutionalize the concept of cooperative federalism. That is, the recognition that governance of this great nation is a shared responsibility of federal and state partners. This is particularly true with regard to the regulation of pesticides. Through the administration of FIFRA, EPA undertakes extensive review of more than 125 different health, safety and efficacy studies, and ultimately, EPA makes a decision to register a pesticide for distribution, sale and use if it determines that using the pesticide according to specifications "will not generally cause unreasonable adverse effects on the environment."

While some may believe this is the end of the process, it is in fact only the beginning. Specifically, the pesticide must also be registered in any state where it is to be used. In most cases, it is the responsibility of my colleagues in the state Departments of Agriculture to review and register these products for use in the state.

Nobody will be surprised to learn that there are high costs associated with bringing crop protection products to the market. We are concerned that regulatory costs and burdens are unnecessarily exacerbated when, as we have witnessed in the past few years, there is not a robust level of communication, cooperation, and coordination between EPA and its co-regulatory partners at the state level. NASDA members, myself included, have been continually frustrated by the seeming lack of regard for our concerns and contributions to this process.

We were particularly encouraged by Administrator Pruitt's comments during his confirmation hearing reaffirming the role of states through Cooperative Federalism, and subsequently, we have been extremely pleased with the direct action and outreach EPA has undertaken to execute this new directive.

As I've suggested, many issues of concern of the state co-regulators with EPA's regulatory proposals can and should be addressed at the beginning of the process. Communication, cooperation and coordination shouldn't be a goal, they should be a given. We feel there are opportunities to strengthen this regulatory partnership between EPA and the state departments of agriculture, and we would

welcome the opportunity to explore these possibilities with the Committee going forward.

FIFRA Process Integrity

FIFRA established a unique, effective, and comprehensive regulatory structure to provide pesticide-related environmental and public health protection in which state lead agencies have primacy in the enforcement of pesticide matters. FIFRA created requirements for pesticide registration, labeling, and use that are the end result of an extensive pre-market approval process. This registration process requires products to meet strict safety guidelines and includes rigorous examination of environmental fate data and health exposure assessments.

It is essential for state departments of agriculture and the producers we serve to have a robust, transparent, and scientifically-sound FIFRA registration and reregistration process to deliver new technologies and critical crop protection tools in a timely and predictable manner. In order to achieve this end, NASDA requests Congress ensure there is a fully funded, fully resourced, and fully staffed Office of Pesticide Programs to conduct the rigorous and timely scientific review necessary for these essential crop protection tools.

NASDA supports the original intent of Congress that FIFRA be the primary federal statute under which pesticide registration and use is regulated. As regulatory partners with EPA, state departments of agriculture play an essential role in delivering, implementing, and enforcing various FIFRA-related programs.

Pesticide registration and use should not be regulated under other federal statutes that were neither designed for, nor intended to be the governing statutes for pesticide distribution, sale and use (e.g. the Clean Water Act, the Endangered Species Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, etc.). Pesticide uses that have been reviewed and registered under FIFRA should not be subject to additional requirements (including costly and duplicative permit requirements) under other federal statutes.

In situations where conflicting or duplicative requirements of other environmental statutes overlap with FIFRA, deference should be granted to the FIFRA registration process in a manner that is science-based, transparent, and

allows stakeholders the opportunity to comment upon and fully analyze the ramifications of the proposed action. EPA must recognize that state lead agencies are not only important stakeholders, but are also co-regulators under FIFRA and must, therefore, be intimately involved in this process.

Pesticide Registration Improvement Act

The Pesticide Registration Improvement Act (PRIA) is once again nearing time for reauthorization. The current law (PRIA 3) expires on September 30 of this year. PRIA provides a stable and predictable funding source for the EPA Office of Pesticide Programs and establishes a functional and timely process for pesticide and inert ingredient review so that registrants are able to efficiently plan for product approval and market availability. Equally important, PRIA provides additional resources to the states to conduct pesticide education, training, and worker protection activities.

As you know, PRIA has attracted wide, bipartisan support due to its unique success of delivering good government through stakeholder collaboration. NASDA is a member of the PRIA Coalition, which includes organizations representing the registrant community, chemical and biotechnology industries, farmworker advocates, and environmental non-governmental organizations. NASDA supported legislation (H.R. 1029) introduced in the House by Representative Davis of Illinois that attracted widespread bipartisan support, and in fact was agreed to by unanimous voice vote in the House of Representatives on March 20.

Legislation passed in the House would reauthorize existing provisions for seven years, as opposed to the five year extensions in previous iterations of PRIA. The legislation provides two increases of 5% each on registration fees over the seven years. The legislation also provides a \$500,000 set aside for EPA to meet deadlines for efficacy guidelines for pesticides to combat bed bugs (which have shut down schools, hotels, dorms, and movie theaters), and crawling and flying insects, which will inform industry what efficacy tests are required. The bill increases maintenance fees to \$31 million annually from 2017-2023 and provides increased funding for grant programs, promoting Good Laboratory Practices, and farm worker protection education. This latest iteration of PRIA also sets the appropriations trigger level at 2012 budget levels of \$128.3 million ensuring that the industry fee supplements appropriations. Under FIFRA Section 33(c)(3)(B),

the EPA is authorized to use 1/17 of the amount of the Pesticide Registration Fund (but not less than \$1 million) to enhance current scientific and regulatory activities related to worker protection and \$500,000 in each fiscal year, 2018 through 2023, for funding of the Pesticide Safety Education Program (PSEP). State agencies strongly support the allocation of these funds to support the critical mission related to worker protection.

NASDA supports this legislation and asks that this Committee and the Senate to act swiftly to pass this important legislation and send this to the President for his signature.

Support for OPMP

The U.S. Department of Agriculture's (USDA) Office of Pest Management Policy (OPMP) was created as part of the 1998 Agricultural Research, Extension, and Education Reform Act in order to provide leadership in coordinating interagency activities with the EPA, the U.S. Food and Drug Administration (FDA), and other Federal and State agencies to coordinate agricultural policies within the Department related to pesticides. The law further requires OPMP to consult with and provide services to producer groups and interested parties.

The Congress believed creating OPMP was necessary to focus and coordinate the many pest management and pesticide-related activities carried out within the Department. From the legislative history, it is apparent Congress felt strongly this was a necessary step for USDA to effectively carryout its statutory responsibilities with respect to pesticide issues and pest management research.

The law creating this office established that the Director of this office would work with EPA, State Departments of Agriculture producers, producers, and other appropriate groups to develop effective, efficient mechanisms for gathering data necessary for making regulatory decisions. To achieve the many objectives the law envisioned in creating this office, it was expected the office would be created within and staffed by an official within the Office of the Secretary.

Congress was particularly concerned the Director of the OPMP be someone the Secretary had trust and confidence in to ensure that the department would be an effective and forceful advocate within the administration on issues within the

purview of this office. As such, the law requires the Director of the OPMP report directly to the Secretary or Deputy Secretary of Agriculture.

We ask that members of this Committee use your considerable influence to ensure OPMP is vested with the authority and political leverage intended by the statute under which it was created. OPMP is an essential resource and indispensable partner to state departments of agriculture in its delivery of expertise on pesticide regulatory programs.

Conclusion

State departments of agriculture play a critical role in carrying out the regulatory programs impacting our agricultural producers. We serve as both enforcement agents and ambassadors to our agricultural producers, and at a minimum, we have a responsibility and an obligation to fulfill the spirit and intent of the statutes, programs, and Executive Orders controlling and directing that regulatory development process.

It is essential for our federal partners to utilize the expertise of the states and the producers in those states to inform, develop, and implement a scientifically sound, consistent, and transparent regulatory framework to ensure our producers are able to continue to produce the food, fiber, and fuel our country and much of the world depends upon.

Before I conclude my remarks, I want to offer a solution and point out a constant theme all of my colleagues as Secretaries, Directors and Commissioner of state departments of agriculture discuss throughout the country and that is the need to "Educate before you Regulate."

I appreciate the opportunity to testify before you today, and I welcome any questions you may have.