

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)  
AND  
ENVIRONMENTAL PROTECTION AGENCY (EPA)**

This memorandum of understanding (MOU) is entered by and between the Environmental Protection Agency (EPA) and the United States Department of Agriculture (USDA), (together, the Parties).

**Authorities**

The authorities and regulations of USDA and EPA to enter into and engage in the activities described within this MOU include, but are not limited to:

1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
2. Council on Environmental Quality regulations (40 CFR 1500-1508 et seq.)
3. Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.)
4. Soil Conservation and Domestic Allotment Act of 1935 (16 U.S.C. 590a-f, q, q1)
5. NRCS Regulations Implementing the NEPA (7 CFR Part 650)
6. Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7653)

**Background**

In 2023, EPA announced that the Agency will develop several draft strategies to make its Endangered Species Act (ESA) section 7 consultations more efficient, thereby allowing EPA to meet its ESA obligations more quickly. To date, EPA has issued a draft Vulnerable Species Pilot Project and a draft Herbicide Strategy and taken public comment on these documents. EPA has committed to adding to and finalizing those strategies, and releasing additional strategies and policy documents, over the next few years as part of its 2022 ESA-FIFRA Workplan.

**Purpose and Mutual Interest**

As part of EPA-USDA coordination on the ESA pesticide strategies and mitigation measures, this MOU defines a working relationship between the agencies in which EPA and USDA will work together to ensure that when pesticide labeling, including websites, and related documents reference NRCS-defined conservation practices and data, those references follow the conditions described in this MOU. This working relationship will also consider pesticide users who voluntarily follow NRCS conservation practice standards and other mitigation measures

that EPA has identified will reduce pesticide movement off-field. Pesticide users can count those measures toward meeting pesticide labeling requirements. Thus, EPA and USDA recognize that the use of NRCS conservation practices that EPA has determined are efficacious in meeting ESA and FIFRA obligations may lessen the compliance costs and simplify expectations of growers. This working relationship aims to assist EPA in achieving its ESA obligations while minimizing impacts on agricultural producers, simplify the understanding of compliance requirements, and carry out capacity building and communications around NRCS practices referenced in pesticide registrations pursuant to this MOU. Finally, the MOU identifies how EPA will provide advance notice to USDA before a pesticide registration document incorporates NRCS practices.

In pursuing the actions under this MOU, the two agencies expect the following principles to guide their cooperation:

- (1) It is critically important that EPA meet its ESA obligations for its actions.
- (2) It is critically important to both the protection of species and U.S. agricultural production that farmers and registrants are able to comply with the pesticide mitigations that EPA determines are necessary to meet its FIFRA and ESA obligations.
- (3) Acknowledging and crediting farmer implementation and maintenance of conservation practices may decrease the burden on farmers while potentially reducing off-field pesticide exposure to listed species.
- (4) EPA is the sole regulatory authority for pesticide regulations, and USDA will not be involved in any certification program or system, enforcement, or other means of approval, of pesticide mitigation measures determined to be necessary for EPA to meet its FIFRA and ESA obligations.
- (5) NRCS programs and practices will not change as a result of EPA's efforts, nor is EPA required to change pesticide registrations or their labeling requirements as a result of updates to NRCS programs or practices.
- (6) Participation in NRCS programs, use of conservation practices and standards, and obtaining NRCS technical and financial assistance remain voluntary and at the discretion of the landowner and USDA, regardless of any actions of the Parties under this MOU.
- (7) Any reference to NRCS practices by EPA as actions that qualify as mitigation measures that satisfy pesticide labeling requirements will not obligate USDA to provide technical or financial assistance to comply with those requirements.
- (8) USDA has no role in EPA's determination whether an NRCS conservation practice is efficacious in meeting FIFRA and ESA legal obligations. USDA's conservation practices are designed to meet its program objectives and without regard to whether they would prevent adverse effects on any species.

## **Responsibilities of the Parties**

### **1. Role of USDA**

Under this MOU, USDA expects to:

- (1) Work with EPA to allow EPA to reference to and cite NRCS definitions of conservation practices as part of its FIFRA pesticide regulatory program including on pesticide labeling, including websites, and related documents, consistent with the principles above and any actions taken under this MOU.
- (2) Work with EPA to allow EPA to reference and cite data and documentation on conservation practices that NRCS uses and confirms contribute to EPA's understanding of a pesticide mitigation measure and its impact on pesticide loading in the environment.
- (3) Review EPA's proposals to reference NRCS conservation practices and any updates to those proposals to help ensure that pesticide labeling requirements do not conflict with a person's eligibility to participate in NRCS programs.
- (4) Inform EPA of any proposed updates to NRCS conservation practices using the Federal Register notice and comment process,<sup>1</sup> so that EPA can determine how those updates may affect pesticide labeling requirements that reference the practices. Prior to posting of updated and/or changed final conservation practices in the NRCS National Handbook of Conservation Practices, H\_450\_NHCP located at the following URL: [eDirectives \(usda.gov\)](https://www.usda.gov/eDirectives), NRCS will provide the final to EPA.
- (5) Collaborate with EPA on public communications to support the purpose and actions in this MOU.
- (6) Jointly conduct with EPA outreach to stakeholders about incorporation of NRCS practices into pesticide labeling, implementation of those requirements, and EPA pesticide strategies and mitigation measures.

## 2. Role of EPA

Under this MOU, EPA expects to:

- (1) Develop a guidance document that will explain to pesticide users which NRCS conservation practices can fulfill which pesticide labeling requirements. EPA will provide NRCS with opportunities to review and comment on the draft guidance, including all template proposed pesticide labeling language that references NRCS conservation practices.
- (2) Work with USDA to develop a process for informing USDA about which pesticide labeling includes mitigation measures that can be met through NRCS practices. That

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<sup>1</sup> Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 provided as follows: **SEC. 343. PUBLIC NOTICE AND COMMENT FOR REVISIONS TO CERTAIN STATE TECHNICAL GUIDES.** After the date of enactment of this Act, the Secretary of Agriculture shall provide for public notice and comment under section 553 of title 5, United States Code, with regard to any future revisions to those provisions of the Natural Resources Conservation Service State technical guides that are used to carry out subtitles A, B, and C of title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.).

process will provide at least a 60-day notice to USDA before publishing (1) a registration review, new active ingredient, or new use FIFRA decision that incorporates pesticide labeling that includes mitigation measures that identify or reference NRCS practices, or (2) changes to a EPA website that reference mitigation measures that identify or reference NRCS practices.

- (3) Work with USDA to develop language for EPA's website and other forms of communication that explain (1) the relationship between NRCS practices and pesticide labeling requirements that reference NRCS conservation practices, (2) that those pesticide requirements do not alter NRCS programs or practices, including that participation in an NRCS program does not turn the practices implemented through that program into pesticide regulatory requirements, and (3) that by EPA's incorporating NRCS practices into pesticide requirements to address ESA, USDA is not agreeing that implementing those practices will result in ESA compliance. For example, EPA intends to indicate that USDA does not have any role in developing or enforcing pesticide requirements that reference NRCS practices. EPA will give USDA the opportunity to review and comment on these communications before they are published.
- (4) Work with USDA to develop language for EPA's website and other forms of communication explaining that pesticide users do not need to obtain technical assistance from NRCS or enroll in an NRCS program to implement the pesticide labeling requirements that reference NRCS practices. EPA will give USDA the opportunity to review and comment on this information before it is published.
- (5) Collaborate with USDA on public communications to support the purpose and actions in this MOU.
- (6) Jointly conduct with USDA outreach to stakeholders about incorporation of NRCS practices into pesticide labeling, implementation of those requirements, and EPA pesticide strategies and mitigation measures.

## **General Terms**

- (1) NRCS and EPA will handle their own activities and use their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner. However, if USDA documents that the reference to NRCS practices significantly affects its workload due to requests for NRCS technical assistance related to compliance with pesticide labeling requirements, the Parties may discuss the implications and amend this MOU as necessary.
- (2) Nothing in this MOU shall obligate either Party to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property between the parties requires execution of separate agreements and is contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority.

Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

- (3) This MOU takes effect upon full execution by both Parties and shall remain in effect from February 7, 2024 – February 6, 2029. This MOU may be extended or amended upon written request of either Party and the subsequent written concurrence of the other(s). Either Party may terminate this MOU with a 60-day written notice to the other(s).
- (4) This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person. This MOU does not direct or apply to any person outside of the Parties.

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**Signatures:**

In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

For: Environmental Protection Agency (EPA)

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Michal Freedhoff, Assistant Administrator  
Office of Chemical Safety and Pollution Prevention  
Environmental Protection Agency

Date

For: United States Department of Agriculture

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Robert Bonnie, Under Secretary  
Farm Production and Conservation  
United States Department of Agriculture

Date