

emissions reductions from the provision.

### C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to approve the submitted rule. The EPA concludes that, while SCAQMD Rule 2305 does not meet all the evaluation criteria for enforceability, we are proposing approval because the submitted rule is not a required SIP element and would strengthen the SIP. In light of the deficiencies identified above, however, the EPA concludes that the submitted rule should not be credited in any attainment and rate of progress/ reasonable further progress demonstrations.

We will accept comments from the public on the proposed action, the rationale and basis for the proposed action, and other relevant matters until November 13, 2023. If the EPA takes final action to approve the submitted rule, the final action will incorporate this rule into the federally enforceable SIP.

### III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference SCAQMD Rule 2305, adopted on May 7, 2021, that establishes an ISR program for certain warehouse owners and operators, as described in section I of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office

of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), 13563 (76 FR 3821, January 21, 2011) and 14094 (88 FR 21879, April 11, 2023);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The SCAQMD did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an

evaluation. However, the Community Steering Committees for four environmental justice communities admitted into the State's AB 617 program in the affected area requested development of a warehouse ISR rule due to concerns regarding air pollution impacts from trucks and DPM.<sup>68</sup> The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

Lastly, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 5, 2023.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2023–22518 Filed 10–11–23; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 152

[EPA–HQ–OPP–2023–0420; FRL–10637–01–OCSPP]

RIN 2070–AL13

### Pesticides; Review of Requirements Applicable to Treated Seed and Treated Paint Products; Request for Information and Comments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) is soliciting public

<sup>68</sup> SCAQMD Final Staff Report, 9 and 10.

comments and suggestions about seeds treated with a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as well as treated paint. The Agency is considering whether a rule under FIFRA to regulate certain use of treated seed and treated paint products or other administrative action is appropriate considering questions raised by stakeholders. To inform this consideration, EPA is requesting comment and information from all stakeholders on the use and usage of treated seed, including storage, planting, and disposal of the treated seed, and on whether or to what extent treated seed products are being distributed, sold, and used contrary to treating pesticide and treated seed product labeling instructions. Similarly, EPA is requesting comment from stakeholders on the addition of labeling requirements on the labels of treated paint products and potential language that should be included in those labels.

**DATES:** Comments must be received on or before December 11, 2023.

**ADDRESSES:** The docket for this action, identified under docket identification (ID) number EPA-HQ-OPP-2023-0420, is available online at <https://www.regulations.gov>. Additional instructions on visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Susan Bartow, Chemical Review Manager, Pesticide Reevaluation Division, Office of Chemical Safety and Pollution Prevention (7508M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; phone: 202-566-2280; email address: [OPPTreatedArticles@epa.gov](mailto:OPPTreatedArticles@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

*A. Does this action apply to me?*

You may be affected by this action if you manufacture, distribute, sell, treat, or use pesticide-treated seed or treated paint products. EPA has promulgated several exemptions for pesticide products of a character not requiring regulation under FIFRA, including for treated articles and substances; EPA is now considering modifying the treated article exemption. This exemption is codified in 40 CFR 152.25(a). The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, rather it provides a guide to help readers determine whether this

document applies to them. Potentially affected entities may include:

- Pesticide and other agricultural chemical manufacturers (NAICS codes 325320 and 325311).
- Manufacturers who may also be distributors of these products, which includes farm supplies merchant wholesalers (NAICS code 424910).
- Retailers of pesticide products (some of which may also be manufacturers), which includes nursery, garden center, and farm supply stores (NAICS code 444220).
- Government establishments engaged in regulation, licensing, and inspection (NAICS code 926150).
- Users of treated seed products and persons involved in crop production (NAICS code 111).
- Persons involved in support activities for crop production (NAICS code 1151).

If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What is the Agency's authority for taking this action?*

This advance notice of proposed rulemaking (ANPRM) is issued under the authority of FIFRA, 7 U.S.C. 136 *et seq.*, particularly FIFRA sections 3 and 25. FIFRA section 3(a) authorizes EPA to regulate the distribution, sale, or use of any unregistered pesticide “[t]o the extent necessary to prevent unreasonable adverse effects on the environment” (defined at FIFRA section 2(bb), in pertinent part, as “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide”). 7 U.S.C. 136a(a) and 136(bb). Exemptions to the requirements of FIFRA are issued under the authority of FIFRA section 25(b). Eligible products may be exempted from among other things, registration requirements under FIFRA section 3. In addition, FIFRA section 25(a) authorizes EPA to “prescribe regulations to carry out the provisions of [FIFRA]” and FIFRA section 25(b) authorizes exemptions from, among other things, registration requirements under FIFRA section 3. 7 U.S.C. 136w(a) and (b).

*C. What action is the Agency taking?*

EPA is requesting comments on specific issues related to seed treated with conventional pesticides (“treated seed”) and paint treated with conventional or antimicrobial pesticides (“treated paint”). As to treated seed products, EPA has typically included on

the label of the treating pesticide labeling instructions regarding both the use of the treating pesticide and the distribution, sale, and use of the treated seed product, and EPA’s exposure assessments and registration decisions take those instructions into consideration. However, states and other stakeholders have raised questions about the clarity and enforceability of instructions specifically relating to use of the treated seed products (*i.e.*, instructions relating to the storage, planting, and management of the treated seed). EPA is seeking to improve labeling on both treating pesticide labeling and labeling on treated seed products (*e.g.*, seed bag tags) during registration and registration review processes, and is requesting comment in response to this FRN on such labeling instructions. EPA is also requesting comment on 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. To EPA’s knowledge, treated seed are generally being used consistent with the instructions on the label of the treated seed product. However, the Agency is seeking any specific information from all stakeholders to further inform this issue (*e.g.*, whether there are specific cases of use contrary to label instructions) before considering EPA’s next steps with respect to how EPA regulates treated seed products. EPA is looking for this information from a broad range of stakeholders, including those who treat seed in commercial facilities or on the farm and those who use treated seed products.

For treated paint products, pesticide labeling requirements do not currently exist. EPA is exploring the option of requiring labeling instructions on treated paint products to address potential risks of concern for professional painters exposed to the pesticide in the treated paint without the use of personal protection equipment (PPE), such as respirators, when applying the paint using a spray method. Thus far, labeling for treated paint has been proposed for only one active ingredient (*i.e.*, diuron), but is being considered for other active ingredients that are registered for use as paint preservatives. EPA is requesting comments among other things on requiring such labeling instructions on treated paint containers.

EPA will consider comments and information to determine whether to amend its approach for allowing treated

seed and treated paint products to be wholly exempt from FIFRA requirements (e.g., through issuance of a rule pursuant to FIFRA section 3(a) to regulate distribution, sale, and use of treated seed product and/or other administrative action). FIFRA section 3(a) authorizes EPA to limit the distribution, sale, or use of an unregistered pesticide “[t]o the extent necessary to prevent unreasonable adverse effects on the environment.” Such a FIFRA section 3(a) rule and conforming amendments to the treated article exemption would be intended to allow for enforcement of certain use instructions on labeling of treated seed and treated paint as an alternative to registration of such products. Other actions could include amending the treated article exemption to limit the scope of the exemption so that some FIFRA requirements would still apply (e.g., requiring seed treatment facilities to identify as establishments), and other administrative actions could include addressing specific use concerns with treated seed through further action on the specific treating pesticide registration (e.g., clarifying labeling instructions, reducing or eliminating use of the treating pesticide for some seed treatments, or including terms and conditions on the registration for expiration of the use or imposition of use restrictions should use contrary to labeling instructions be reported). This ANPRM initiates the rulemaking process by specifically soliciting public comments and suggestions about the potential FIFRA 3(a) rule and/or other related amendments, as it relates to treated seed and paint products.

#### *D. What are the incremental costs and benefits of this action?*

This ANPRM does not impose or propose any requirements, and instead seeks comments and suggestions that will help the Agency identify whether and to what extent there is a potential need for a FIFRA section 3(a) rule and/or other regulatory or administrative action. If EPA decides to propose changes to the regulations, it will conduct the appropriate assessments of the costs and benefits of those changes and provide opportunities for further public comment.

#### *E. What should I consider as I prepare my comments for EPA?*

##### *1. Submitting CBI.*

Do not submit CBI to EPA through <https://www.regulations.gov> or email. If you wish to include CBI in your comment, please follow the applicable instructions at <https://www.epa.gov/dockets/commenting-epa-dockets#rules>

and clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

##### *2. Tips for preparing your comments.*

When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

## **II. Background**

### *A. Brief Summary of EPA’s Registration Process for Pesticides*

Applications for registration of a pesticide may be submitted to EPA and must meet the requirements in FIFRA sections 3(c) and 33. 7 U.S.C. 136a and 136w–8. Those requirements include, among other things, submission of complete labeling of the pesticide, including claims made for the pesticide and instructions on use; complete data in support of that registration request; and requisite fees in support of that application. 7 U.S.C. 136a(c); 7 U.S.C. 136a(b); and 7 U.S.C. 136w–8; *see also*, 40 CFR part 152 for application procedures and part 158 for data requirements. FIFRA section 3(c)(4) requires EPA to issue a **Federal Register** notice and opportunity for comment in relation to “each application for registration of any pesticide if it contains any new active ingredient or if it would entail a changed use pattern.” 7 U.S.C. 136a(c)(4). *See also* 40 CFR 152.105.

To grant a pesticide registration, FIFRA requires EPA to consider whether the pesticide meets the FIFRA standard that use of the pesticide has no “unreasonable adverse effects” to human health and the environment. 7 U.S.C. 136a(c)(5). FIFRA section 2(bb) defines “unreasonable adverse effects on the environment” to mean, among other things, “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide” or “a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal, Food, Drug, and Cosmetic Act” (FFDCA). 7 U.S.C. 136(bb). EPA is required to review each pesticide registration every 15 years to determine whether the pesticide continues to satisfy the FIFRA

standard for registration. 7 U.S.C. 136a(g) and 40 CFR Part 155, subpart C.

It is a violation under FIFRA to sell or distribute an unregistered pesticide or to use a registered pesticide in a manner inconsistent with its labeling. 7 U.S.C. 136j(a)(1)(A) and 136j(a)(2)(G). FIFRA section 12 does not make it a violation to use an unregistered pesticide. However, under FIFRA section 3(a), EPA may, by regulation, impose limits on the distribution, sale, and use of any pesticide that is not registered “to the extent necessary to prevent unreasonable adverse effects on the environment,” and compliance with such regulation is enforceable under FIFRA section 12(a)(2)(S). 7 U.S.C. 136a(a) and 136j(a)(2)(S).

### *B. Background on the Treated Article or Substance Exemption*

FIFRA section 25(b)(2) provides that the Administrator may, by regulation, exempt from the requirements of FIFRA, including the registration requirements, any pesticide which the Administrator determines to be of “a character which is unnecessary” to be subject to FIFRA “in order to carry out the purposes” of FIFRA. 7 U.S.C. 136w(b)(2). Several exemptions under FIFRA section 25(b)(2) were adopted in 1988 and included a “treated articles and substances” exemption at 40 CFR 152.25(a).

The regulation at 40 CFR 152.25 provides that “the pesticides or classes of pesticides listed in this section have been determined to be of character not requiring regulation under FIFRA and are therefore exempt from all provisions of FIFRA when intended for use, only in the manner specified.” The regulation in 40 CFR 152.25 identifies the types of pesticides and conditions applicable for an exemption to apply. 40 CFR 152.25(a) identifies treated articles or substances and defines them as “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), if the pesticide is registered for such use.”

It has been EPA’s longstanding position that FIFRA section 25(b)(2) authorized the 1988 final rule exempting pesticide-treated articles or substances because EPA’s assessment of the treating pesticide comprehensively addresses the use of and exposure to the treating pesticide and to the article or substance that is permissibly treated and distributed, sold, and used consistent with labeling instructions. The FIFRA finding to grant the

registration or continue the registration of the pesticide is based on that assessment, which again addresses the risks from use of the treating pesticide and use of the treated article or substance. No new assessment or risk finding is necessary for the exemption to apply and no new FIFRA section 25(b)(2) finding is required for each and every article or substance treated. Rather, once a pesticide is registered under FIFRA for use in treating an article or substance, the only conditions applicable to a determination as to whether the treated article exemption applies to the article or substance treated by that pesticide are those stated in the regulatory text at 40 CFR 152.25(a).

It has also been EPA's longstanding position that treated seed products meeting the regulatory conditions at 40 CFR 152.25(a) are exempt from FIFRA requirements. Those conditions include that a pesticide "registered for such use" is used, which EPA has interpreted to require compliance with labeling instructions relating to distribution, sale, and use of the pesticide registered under FIFRA to treat seed and the distribution, sale, and use of the treated seed product itself. If distribution, sale, and/or use of the treating pesticide or treated seed product is not consistent with such labeling for the treating pesticide or treated seed product, then the "registered for such use" criterion is not met and the exemption does not apply. For example, if the treating pesticide requires that the treated seed bag tag include specific labeling information and instructions, but such bag tag does not include the required labeling or instructions, the "registered for such use" condition is not met. In such a case, the exemption does not apply and the treated seed product must be registered under FIFRA and must comply with other FIFRA requirements, such as the requirement in FIFRA section 7 to register the establishment in which the pesticide is produced and the requirements in FIFRA section 17(c) and 19 CFR 2.110 through 2.117 to file an EPA Notice of Arrival of Pesticides and Devices (EPA Form 3540-1) or its electronic equivalent for importation of treated seed product (Ref. 1). Similarly, if the treated seed product is not used consistent with the instructions on treating pesticide labeling as communicated on the seed bag tag, the condition that a pesticide "registered for such use" is not met and use of the treated seed product would be use of an unregistered pesticide. The required labeling information and instructions are helpful to farmers who use the

treated seed and may be considered in EPA risk assessments. As a result, compliance with the requirements for such labeling and the instructions relating to distribution, sale, and use may be necessary to protect against unreasonable risks to the environment.

A more thorough discussion of EPA's approach for evaluating pesticides for use in treating seeds, which includes an evaluation of the use of the treated seed product itself, and the treated article exemption is discussed in EPA's Treated Seed Petition Response which is discussed in the next section.

#### *C. Background on the Petition Relating to Treated Seed and EPA's Response*

In April 2017, the Center for Food Safety (CFS or the Petitioner) filed a petition with EPA seeking a rulemaking or a formal agency interpretation relating to pesticide treated seed (hereinafter Treated Seed Petition) (Ref. 2). Specifically, CFS petitioned EPA to take the following actions: (1) Amend 40 CFR 152.25(a) to clarify that it does not apply to seeds for planting coated with systemic pesticides, such as the neonicotinoids, that are intended to kill pests of the plant instead of pests of the seed itself; (2) Alternatively, 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 seeds for planting coated with systemic pesticides, such as the neonicotinoids, that are intended to kill pests of the plant instead of pests of the seed itself; and (3) Aggressively enforce FIFRA's numerous pesticide registration and labeling requirements for each separate crop seed product that is coated with a neonicotinoid or other systemic insecticidal chemical.

EPA responded to the petition on September 27, 2022 (hereinafter Treated Seed Petition Response) (Ref. 1). In that response, EPA explained the history of the regulatory treated article exemption, the comprehensive nature of assessments of pesticides that are intended for use in treating seeds which includes assessment of the impact with use of the treated seed, and the regulatory conditions for the article exemption to apply. EPA noted that if the conditions for the exemption are met, the exemption applies; no new assessment or risk finding is necessary and no new FIFRA section 25(b)(2) finding specific to the article or substance treated is required. EPA also noted that it has been reviewing and will continue to review labeling instructions for pesticides registered for seed treatment use(s) in registration and registration review to verify the

completeness of these instructions for both use of the treating pesticide and the distribution, sale, and use of the treated seed products. Finally, EPA acknowledged that use of the treated seed product in a manner contrary to labeling instructions is not generally enforceable under FIFRA. As a result, while the Agency did not grant the petition requests, it noted that it intends to issue this ANPRM to seek additional information on pesticide seed treatment, including use and usage information and whether treated seed products are being used contrary to labeling instructions, and to explore the option of issuing a rule pursuant to FIFRA section 3(a) to regulate the use of treated seed products. As explained in the petition response, plant-incorporated protectants (PIPs) are not subject to the treated article exemption for reasons articulated at 40 CFR 174.1 (because the characteristics of PIPs "distinguish them from traditional chemical pesticides," PIPs are subject to "different regulatory requirements, criteria, and procedures than traditional chemical pesticides"). As a result, PIPs are not within the scope of this ANPRM. For further information, please see docket ID number EPA-HQ-OPP-2018-0805 at <https://www.regulations.gov/docket/EPA-HQ-OPP-2018-0805>.

#### *D. State FIFRA Issues Research and Evaluation Group (SFIREG) Treated Seed Issue Paper*

In August 2022, SFIREG provided EPA with the "Treated Seed Issue Paper" for consideration and response (Ref. 3). Shortly following the submittal of this issue paper by SFIREG, EPA released the Treated Seed Petition Response discussed in Unit II.C., which addressed many of the issues raised in the SFIREG issue paper in full or in part. In June 2023, the Agency responded to the SFIREG issue paper, based on its understanding of the issues that were raised (Ref. 4). Part of that response included EPA's intention to include in this ANPRM the issues that were raised and to particularly focus on those not fully addressed in the Treated Seed Petition Response. Some of the issues raised in the SFIREG issue paper that are included in this ANPRM include use of treated seed products and available data systems to track the active ingredients used for seed treatments, change in use patterns of other pesticides due to availability of treated seeds, and label language on seed treatment products and treated seed products (e.g., seed bag tags). Other issues raised in the SFIREG issue paper that were addressed in the Treated Seed Petition Response, some of which have

requests for comment discussed in Unit III., include assessments of treated seed and effects to different taxa, including pollinators, non-target terrestrial and aquatic organisms, and human health.

#### *E. Background on Treated Paint*

Paint and coating products are often treated with pesticides for a variety of reasons, such as to increase the longevity of the products by controlling microbial contamination of the paint applied to a surface. Pesticide labeling requirements for treated paint or coatings do not currently exist. However, recent EPA risk assessments on paint preservative pesticides suggest that there may be risks of concern for professional painters exposed to treated paint without use of PPE such as respirators when applying paint using a spray method. The concept of adding labeling requirements for treated paint on the paint container has, thus far, only been proposed for one active ingredient (*i.e.*, Diuron Proposed Interim Registration Review Decision Case Number 0046) but is being considered for many other active ingredients that are registered for use as paint preservatives and using the spray method of application. The Agency believes that the proposed labeling requirements for paint containers would help occupational users of paint, particularly those using sprayers to apply the paint, mitigate any potential risks of concern. EPA notes that similar risk mitigation measures are in the process of being implemented in Canada by the Pest Management Regulatory Agency.

### **III. Request for Comment and Information**

#### *A. General*

EPA invites public feedback on the questions posed in this document regarding use and usage of treated seed products and whether there are cases of use contrary to treating pesticide or treated seed product (*e.g.*, seed bag tag) labeling instructions. EPA also invites comments on whether the Agency should take action through a potential FIFRA 3(a) rule and conforming amendments and/or other regulatory or administrative action to address concerns with the potential for noncompliance with labeling instructions. EPA is also requesting public feedback regarding similar questions with respect to treated paint. Please provide EPA with your thoughts as well as a rationale supporting your suggestions. If you can, provide examples or describe situations. Commenters are encouraged to present

any data or information that should be considered by EPA during its consideration of these issues with treated seed and treated paint products and for the potential development of a section 3(a) rule and/or other regulatory or administrative action. EPA is not seeking comment to this docket on EPA assessments to support any particular registration or registration review decision. Such comments must be timely submitted to the dockets for those actions.

As explained in the Treated Seed Petition Response, EPA's assessments for treating pesticides are based on all reasonably available and reliable information, including exposure assessments based on the treating pesticide labeling instructions defining the maximum amount of active ingredient that may be used on the seed. These assessments and labeling instructions are subject to public comment during the registration and registration review processes. In addition, outside of the registration and registration review processes, EPA recently solicited further public comment on proposed updates to all treated seed labeling on treating pesticide products and on treated seed products, to reduce exposures to non-target organisms, which might include federally listed threatened or endangered species. EPA has updated the labeling language for such products for future active ingredients undergoing registration review in response to comments and in anticipation of seeking further comment in response to this ANPRM. In addition, its public processes under registration and registration review for specific pesticide products intended for use in treating seed, EPA will continue to consider further updates to treated seed product label language to take into account additional public comments and new information, if any submitted.

This ANPRM is a separate effort to consider whether to amend its approach for regulation of treated seed products (*e.g.*, through issuance of a rule pursuant to FIFRA section 3(a) to regulate distribution, sale, and use of treated seed products and/or other regulatory or administrative action).

This ANPRM is also intend to explore the option of adding instructions on the labels of pesticides used to treat paint, similar to the approach take for labeling of treated seed, and/or whether to amend its approach for allowing treated paint to be exempt from FIFRA requirements (*e.g.*, through issuance of a rule pursuant to FIFRA section 3(a) to regulate distribution, sale, and use of

treated seed products and/or other regulatory or administrative action).

#### *B. Specific Topics Related to Treated Seed and Paint*

EPA is specifically requesting comment and information on the following topics:

- Effectiveness of instructions on treated seed product labeling (*e.g.*, on the seed bag tags) to mitigate potential risks;
- Use, usage, and tracking of treated seed products;
- Management of spilled or excess treated seed;
- Treated paint; and
- Administrative action, amendment of the treated article exemption, and/or FIFRA section 3(a) Rule.

##### *1. Effectiveness of instructions on treated seed product labeling (e.g., on the seed bag tags) to mitigate potential risks.*

EPA currently is reviewing labeling instructions for pesticides registered for seed treatment use(s) in registration and registration review. EPA intends to ensure that treating pesticide labeling instructions include: (1) the requirement that seed bag tag labeling accompany the treated seed when distributed and sold; (2) that such labeling include specified clear and effective instructions on use of the treated seed, including the name of the active ingredient and pesticide product used (including the EPA product registration number), and instructions on the storage, planting, and/or management of spilled or excess treated seed, as appropriate; and, (3) that the distribution or sale of the treated seed products without such labeling is the distribution or sale of an unregistered pesticide.

The Treated Seed Petition raised a number of issues with the potential for harm from the planting of treated seed or with the planting process used to plant treated seed. The Treated Seed Petition Response discusses each of the issues, including how EPA assessments of the treating pesticide address these issues. The response also discusses the regulatory conditions for application of the treated article exemption and how those conditions apply to treated seed products, including, among other things, the need for use of the treating pesticide and treated seed products to be consistent with the treating pesticide and related seed product labeling instructions. Examples of such labeling are in the document "Labeling Instructions for Pesticide-Treated Seed and Pesticide-Treated Paint Products" (referred to as the "Labeling Instructions" document from hereon) (Ref. 5), which can be found in the

docket EPA–HQ–OPP–2023–0420. For example, the specified labeling language on storage includes instructions on storing away from food and feedstuffs and not allowing children, pets, or livestock to have access to treated seed. Other instructions on use include, for example, the prohibition on use of the treated seed for food or feed; instructions detailing planting methods or management of spilled or excess seed to ensure reduced risk, for example, to pollinators and aquatic environments; and instructions on managing the potential for dusts generated from the abrasion of treated seed coatings during planting (*i.e.*, dust-off).

EPA is requesting comment on the following:

- Labeling instructions presented in the Labeling Instructions document (Ref. 5) and whether there are any necessary improvements to such language.
- Are the examples of current instructions for storage, planting, and management of treated seed clear, generally achievable, *etc.*?
- Are there other recommendations to increase the clarity of instructions on treated seed product (*i.e.*, seed bag tag labeling) for the end user?
- Are there additional or alternative instructions that would be effective in reducing dust-off?

### 2. Use, usage, and tracking of treated products.

EPA's exposure estimates reflect both use and usage information. Use information is focused on the maximum amount of particular pesticide that may be applied based on the treating pesticide labeling instructions (*e.g.*, total active ingredient that may be applied to the seed). Exposure estimates are also based on the modeling parameters for the assessment (*e.g.*, the seeding rate for a particular crop per acre). For FIFRA ecological assessments of seed treatment uses, EPA assumes that the maximum amount of the pesticide is available as if the maximum permitted amount of the pesticide had been directly applied to the soil as shown in the T-Rex User Guide (Ref. 6). The term "usage" has been used broadly to refer to documented applications of a pesticide, including information such as actual application rates and timing, and spatial distribution of applications (usually based on survey data) (Ref. 7 and Ref. 8). Usage information is typically used to allow assessments to be more precise as compared to using worst case assumptions (*e.g.*, on the percentage of a particular crop that is treated with every pesticide registered for use on that crop). EPA does not have current and reliable information quantifying the

total pounds of active ingredient used to treat seed or the location and the number of acres planted with treated seed. Kynetec USA, the primary source of agricultural usage data for seed treatment in the years 2005–2014, stopped providing seed treatment estimates and supporting use of the existing 2005–2014 estimates in 2015 due to concerns about the reliability of those data (Ref. 7). However, applications of pesticides to treat seed may be generally characterized as common for a wide variety of crop seeds and seed pieces for planting based on agricultural extension services' recommendations and other information. EPA assessments detail the basis for use and usage information and such details are subject to public comment during the registration and registration review processes and the Agency continues to work to identify, investigate, and procure additional sources of usage data for seed treatments. As suitable data are procured and determined to meet EPA data quality standards, they will be integrated into usage analyses to help inform risk assessments (Ref. 9).

The Treated Seed Petition noted the lack of pesticide usage data collected by EPA but acknowledged that one EPA assessment assumed nearly 100% of one crop is treated with the referenced pesticide and in another case identified the percentage of the pesticide use that is on treated seed. In response, EPA acknowledged the lack of usage data but more recently, data from two sources (*i.e.*, Ben Kirk and Kline and Company) were identified, procured, and determined to meet EPA data quality standards. Data from those sources have been evaluated and will be integrated into usage analyses to inform risk assessments as appropriate.

The SFIREG issue paper sought additional information on the general use of treated seed and data systems to track use of active ingredients to treat seed. The SFIREG issue paper also sought more information on the impact of the use of treated seed on the other types of applications such as soil or foliar applications (*i.e.*, replacement and reduction in use of other types of applications). Finally, the SFIREG issue paper noted that there is no clear mechanism to address interstate commerce of treated seed and thus no means for a comprehensive state review of environmental impacts of seeds that could be legally planted in that state. The paper notes that state regulation of treated seed would conflict with the regulatory exemption for treated articles, and thus one state is

considering prohibiting use of certain types of treated seed.

EPA is seeking comment on the certain issues summarized below as raised in the SFIREG issue paper and the Treated Seeds Petition.

- Information on the use and usage of treated seed.
  - Given the scope of EPA assessments, whether the potential for tracking of treated seed distribution, sale, and/or use would provide any meaningful improvements in the assessment of the risks of pesticides used to treat seeds.
  - Are there available data detailing the replacement or reduction of other types of pesticides with increasing use of treated seed, since this issue is of interest to states and other stakeholders? EPA would normally address replacement and use reduction on an individual chemical basis, taking into account alternative control strategies to seed treatment (*e.g.*, application of a pesticide at-plant (soil level) or immediately upon germination (foliar)) when there are risks associated with the treated seed (Ref. 10).
  - Are there additional data sets available that may serve to complement the recently acquired data sources (*e.g.*, data that trade organizations might have that can provide a better picture of how much of an active ingredient is used in seed treatment)?
  - EPA requests information on the volume of imported treated seed products and whether amending the treated article exemption so that importers of treated seed products must comply with FIFRA section 17(c) and 19 CFR 12.110 through 2.117, including filing an EPA Notice of Arrival of Pesticides and Devices (EPA Form 3540–1) or its electronic equivalent would assist in tracking the import and distribution of treated seed products (*e.g.*, to track compliance with the exemption conditions).
  - Should the treated article exemption be amended so that treated seed manufacturers would be subject to FIFRA section 7 registration and reporting requirements (Ref. 11)? Would this information help track use of seed treatment pesticides or provide any helpful treated seed usage information?
- ### 3. Management of spilled or excess treated seed.

EPA included additional labeling instructions for management of spilled and excess treated seed in the registration review Proposed Interim Decisions (PIDs) and Interim Decisions (IDs) of several chemicals (see for example Ref. 12 and Ref. 13) as appropriate. This labeling included instructions on the collection and burial

of spilled treated seed, incorporation of treated seed into soil, limiting the broadcast planting of treated seed, and proper disposal of excess treated seed. In 2022, EPA requested additional comment on the labeling instructions as part of the ESA Workplan Update (Ref. 14) to reduce the potential for exposures to non-target organisms from spilled treated seed or disposal of excess treated seed, which might include federally listed threatened/endangered species.

Comments on the ESA Workplan Update (Ref. 14) raised concerns with disposal of treated seed, particularly for use in ethanol production. The proposed labeling instructions that are presented in Labeling Instructions document (Ref. 5) are intended to address concerns relating to disposal of treated seed, exposure to wildlife, contamination of ground and surface water, sufficiency of current disposal instructions on both the registered treating pesticide product and treated seed product labeling, and disposal by way of ethanol production (for oil seed crops such as corn and soybeans). The concern regarding disposal of treated seeds stems from the possibility of a buildup of pesticide material as a byproduct of ethanol production.

The Agency previously approved labels for oil seed crops that allowed for the use of excess treated seeds in ethanol production. EPA became aware of the potential for the use of excess, unmarketable treated seeds of oilseed crops in ethanol production and was concerned about the potential for pesticide residues found in the ethanol production by-products getting into food or feed. The byproducts of the process (*e.g.*, wet distiller's grain or spent mash) can be used as livestock feed or applied as fertilizer but may also contain pesticide residues. To mitigate the risk, EPA allowed the use of treated seeds of oilseed crops for ethanol production but with the following conditions: (1) Byproducts are not used for livestock feed; and (2) No measurable residues of pesticide remain in ethanol byproducts that are used in agronomic practice. However, these measures may not be sufficient to protect against pesticide buildup after ethanol production. To address this concern, the Agency's proposed labeling instructions include language to prohibit the use of excess treated seeds for ethanol production (see Ref. 5).

EPA requests comment on the following:

- Are additional instructions for collection of spilled seed needed?
- What is currently done with excess treated seed if not used in a planting season? For example, what do farming

operations do with excess seed; can that seed be returned to the distributor or seed company?

- Similarly, what do distributors and seed companies do with excess treated seed that is not sold or delivered to or is returned from farming operations?

#### 4. Treated paint.

Paints and coatings are often treated with pesticides for a variety of reasons, such as to increase the longevity of the products by controlling microbial contamination of the paint applied to a surface. Pesticide labeling requirements for treated paint do not currently exist. However, recent EPA risk assessments on paint preservative pesticides suggest that some treated paints may pose risks of concern to professional painters when applying paint using a spray method, without use of PPE such as respirators. The concept of adding labeling requirements for treated paint on the paint container has, thus far, only been proposed for one active ingredient (*i.e.*, Diuron Proposed Interim Registration Review Decision Case Number 0046) but is being considered for many other active ingredients that are registered for use as paint preservatives (Ref. 15). The Agency proposed labeling requirements for paint containers that would help occupational users of paint, particularly those using sprayers to apply the paint, to potentially mitigate the identified risks of concern.

EPA assesses risks to Do-It-Yourself painters as well as professional painters (*i.e.*, those who provide the service of applying paint to the interior and exterior of homes, businesses, other building projects, machinery, and industrial equipment for compensation) from use of treated paint, and such assessments are based on long-standing EPA modeling parameters. An example includes the default value that 5 gallons of paint (applied by a brush or roller) or 50 gallons of paint (applied by airless sprayer) are typically used daily by a professional painter. For Do-It-Yourself painters, the default value is 2 gallons (brush or roller) or 15 gallons (airless sprayer) of paint are typically used daily. EPA has used these values for many years. These values are used to estimate exposure from treated paint. Based on that exposure and the severity of inhalation and dermal hazard of the chemical, EPA determines the level of risk posed by those paints. EPA requests specific comment on the topics discussed further in this unit.

#### a. Implementation and enforcement concerns.

EPA is considering requiring certain treated paint products to include labeling instructions relating to

precautionary label language and proper use. See Ref. 5. Distribution and sale of the treated paint products with such instructions would be an exempted treated substance and thus registration of the treated paint would not be required. For the exemption to apply, and similar to treated seed, the registration and labeling for the treating pesticide will make clear that specified instructions and precautionary language must appear on the treated paint labeling. If more than one pesticide is used to treat the paint, the registration and labeling for the treating pesticides will also likewise make clear that the exemption will only apply if the most restrictive label language is used on the paint label. If the appropriate instructions and precautionary language are not on the paint product labeling, the treated paint would not qualify as an exempt treated article, making it an unexempt, unregistered pesticide that may not be sold or distributed under FIFRA section 3 and subject to enforcement under FIFRA section 12(a)(1)(A).

EPA is also considering adding specific use instructions for professional painters based on recent risk assessments for paint preservatives that have identified risks for professional painters. EPA may propose a FIFRA section 3(a) rule to apply to certain treated paint, making certain use instructions enforceable under FIFRA section 12(a)(2)(S). Similar to the discussion on treated seed, other administrative actions may also be considered (*e.g.*, limiting or cancelling use of specific active ingredients to treat paint based on risk assessment).

EPA requests specific comment on the following topics:

- If EPA were to establish label requirements for treated paint products, what should be included to increase the clarity of the labeling and its safe use for the end user and the environment?
- Is there evidence that the lack of label or labeling requirements on treated paint has resulted in harm to human health or the environment? This may include harm experienced by professional painters from use of treated paint, improper disposal of treated paint, *etc.* This evidence could come in the form of work-related treated paint accident reports.
- Would requiring on the treated paint label the EPA registration number for each treating pesticide and the appropriate use instructions relating to painter protection be effective in reducing the identified risk concerns? If not, what additional information or requirements should EPA consider?

- Should the treated article exemption be amended so that paint manufacturing establishments producing pesticide-treated paint would be subject to FIFRA section 7 registration and reporting requirements (Ref. 11)? If so, should the establishment registration number be included on the label of the treated paint? How many paint manufacturers might be subject to such a requirement?

- If EPA were to establish enforceable use requirements for professional painters using treated paint, what additional information or requirements should EPA consider in this rulemaking to ensure effective enforcement? This may include information on additional resources, processes, *etc.* needed by states for enforcement.

b. *Importation.*

As noted previously, the condition in the exemption that the treating pesticide be “registered for such use” specifies that the exemption only applies to treated paint that is formulated with a FIFRA-registered pesticide product. EPA requests information on the volume of imported treated paint and whether amending the treated article exemption so that importers of treated paint must comply with FIFRA section 17(c) and 19 CFR 12.110 through 2.117, including filing an EPA Notice of Arrival of Pesticides and Devices (EPA Form 3540–1) or its electronic equivalent would assist in tracking the import and distribution of treated paint (*e.g.*, to track compliance with the exemption conditions).

5. *Administrative action, amendment of the treated article exemption, and/or FIFRA section 3(a) rule.*

EPA’s assessments for seed and paint treatment uses are comprehensive, and EPA processes allow for comment on those assessments. As noted in the Treated Seed Petition Response, amending the regulatory exemption for treated articles to require registration of pesticide-treated seed where there is general compliance with labeling instructions for the FIFRA registered pesticides and treated seed products would provide little to no human health or environmental benefits. This is based on the comprehensive nature of EPA assessments for treating pesticides and treated seed and given EPA has no information suggesting that users of treated seed products are distributing, selling, or using the seed products contrary to labeling instructions. This is the same case for other treated articles and substances, including treated paint. However, concerns were raised by the Treated Seed Petition and the SFIREG issue paper regarding a lack of enforceability relating to use of treated

seeds contrary to label instructions and possible effects of such use on human health and the environment. The same concerns also apply to treated paint products. Thus, EPA is requesting comment from stakeholders on whether or to what extent there might be use of treated seed and paint products contrary to labeling instructions for the treated seed and paint.

EPA will take into consideration comments and information submitted in response to this ANPRM to determine whether to amend its approach for regulation of treated seed and treated paint (*e.g.*, through issuance of a rule pursuant to FIFRA section 3(a) to regulate distribution, sale, and use of treated seed and paint products and/or other regulatory or administrative action). FIFRA section 3(a) authorizes EPA to limit the distribution, sale, or use of an unregistered pesticide “[t]o the extent necessary to prevent unreasonable adverse effects on the environment.” EPA believes a FIFRA section 3(a) rulemaking could be a more efficient and less resource-intensive means to address some of the concerns that have been raised by Petitioner and states relating to use of the treated seed, where there is some indication that compliance with such labeling is in question. Other regulatory approaches could include limiting the scope of the exemption so that some FIFRA requirements would still apply (*e.g.*, requiring seed treatment facilities to identify as establishments). Other administrative approaches could include addressing specific use concerns through further action during registration review for specific active ingredients (*e.g.*, clarifying labeling instructions, further reducing or eliminating use of the treating pesticide for some seed or paint treatments, or including further terms and conditions on the registration for expiration of the use or imposition of use restrictions should use contrary to labeling instructions be reported).

EPA requests comment on the following:

- Is a FIFRA section 3(a) rule and/or other regulatory or administrative action necessary or appropriate to prevent unreasonable adverse effects on human health and the environment, considering the concerns raised regarding enforceability of any particular type of labeling instructions on use of treated seed and paint products? Is a FIFRA section 3(a) rule and/or other regulatory or administrative action the best way of ensuring use consistent with instructions on the treating pesticide

labeling relating to use of the treated seed or paint?

- Are there examples of use of treated seed contrary to labeling instructions, and whether adopting a FIFRA section 3(a) rule or the other options noted are the best means of ensuring appropriate use of treated seed?

- Would there be any impacts that might result to states if such a FIFRA section 3(a) rule is finalized? Are there existing tools that would be impacted, or are new ones needed for state investigation and enforcement? For example, state statutes or rules may need to be amended, new standard operating procedures developed, additional personnel hired, or some form of record keeping added.

- Are there specific examples of misuse by seed treatment applicators or from on-farm seed treatments and what type of evidence has been collected to support this claim?

- What are the enforcement measures that are used in regions and individual states for misuse of pesticides and are there barriers to applying such measures to treated articles, such as treated seed and treated paint?

- What are some examples of state statutory authority concerning treated seed and/or paint, and successful enforcement measures that have been exercised regarding treated seed and/or paint?

- What are some considerations, including enforcement considerations, that need to be included in EPA’s approach for assessment and management of pesticide-treated seed and paint?

C. *Potential Environmental Justice Concerns*

Under EPA policy, environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” See <https://www.epa.gov/environmentaljustice>. In addition, Executive Order 12898 (59 FR 7629, February 16, 1994), entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” directs agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority (people of color and/or indigenous



peoples) and low-income populations. EPA has not identified any such disproportionate effects from the issuance of this ANPRM as specified in Executive Order 12898. This ANPRM solicits comments from the public regarding pesticides under the treated article exemption including treated seed and treated paint. The Agency welcomes public input on the consideration of environmental justice concerns in the context of the issues raised in this ANPRM. If and when the Agency proposes regulatory options regarding exemptions under FIFRA or the related procedures, EPA will seek additional input from the public, as appropriate.

1. *Environmental justice concerns for treated seed.*

It is estimated that there are 2.5–3 million agricultural workers in the United States. The Department of Labor conducted a National Agricultural Workers Survey in 2019–2020. In this survey, more than 2,100 farmworkers were interviewed in person. Approximately 78% of those workers identified themselves as Hispanic and 62% said that Spanish was the language in which they were most comfortable conversing. Among U.S.-born farmworkers, 32% were Hispanic. Ten percent of farmworkers were self-identified as indigenous. EPA requests specific comment on the following topic:

- Are there any sources of data that could address whether exposure to treated seeds may be an environmental justice concern (*e.g.*, given the potential for language barriers)?

2. *Environmental justice concerns for treated paint.*

EPA has limited sources of data to address whether there could be disproportionate impact to certain demographics that might be more likely to be exposed to treated paint. The Bureau of Labor Statistics (BLS) data from 2021 include demographics on “painting workers” and “painters and paperhangers.” For both categories, the BLS data suggest that the majority of workers are Hispanic or Latino. According to 2021 U.S. Census data, Hispanics/Latinos make up 18.9% of the population. However, according to BLS, 32.3% of “painting workers” and 59.3% of “painter and paperhangers” are Hispanic or Latino. EPA requests specific comment on the following topics:

- Are there any sources of data that could address whether exposure to treated paint may be an environmental justice concern?
- Does either, or both, of the BLS categories (*i.e.*, painting workers;

painters and paperhangers) represent the type of painter that may be exposed to treated paint?

*D. Potential Impacts on Children’s Health*

In addition to the statutory obligations in FIFRA and FFDCA to consider children’s health in registration decisions, EPA’s 2021 Policy on Children’s Health (Ref. 16) states that protecting children’s health from environmental risks is fundamental to EPA’s mission because varying behavioral and physiological characteristics can affect children’s exposure and health risks, children’s health should be viewed through the lens of a sequence of “lifestages” (from conception, infancy, early childhood, and adolescence through until 21 years of age).

Children may be more susceptible to environmental exposures and/or the associated health effects, and therefore more at risk than adults. These risks arise because children generally eat more food, drink more water, and breathe more air relative to their body size than adults do, and consequently may be exposed to relatively higher amounts of contaminants. Normal childhood activity, such as putting hands and objects in mouths, playing on the ground, or crawling, can result in exposures to contaminants that adults do not face. In addition, environmental contaminants may affect children disproportionately because they are still developing; for example, their immune system defenses are not fully developed, and their growing organs are more easily harmed.

The Agency welcomes public comment and information regarding the consideration of potential children’s health concerns in the context of the issues raised in this ANPRM. If and when the Agency proposes regulatory options regarding exemptions under FIFRA, other actions or the related procedures, EPA will seek additional input from the public to facilitate the Agency’s consideration of potential children’s health concerns related to those actions.

**IV. Next Steps**

EPA intends to review all the comments and information received in response to this ANPRM, as well as previously collected and assembled information, to help determine whether to propose a FIFRA section 3(a) rule or take other regulatory or administrative action to adjust its approach for treated seed or treated paint. In addition to comments received in response to this ANPRM, EPA may seek additional

information from states, industry or other stakeholders. Should EPA decide to move forward with changes to the program, the next step would be to identify, develop and evaluate specific options, including whether amendment to the current regulation in 40 CFR 152.25(a) is appropriate, and if so, to develop a proposed rule for public review and comment. During the development of the proposed rule, the Agency may also engage stakeholders or provide other opportunities for public engagement and comment before issuing a final action.

**V. References**

The following is a list of the documents that are specifically referenced in this document. The docket includes these references and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the reference is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. United States Environmental Protection Agency (USEPA). 2022. EPA Response to the April 2017 Petition from Center for Food Safety and Others Relating to EPA Regulation of Pesticide-Treated Seed. September 27, 2022. <https://www.regulations.gov/document/EPA-HQ-OPP-2018-0805-0104>.
2. Center for Food Safety (CFS) *et al.* 2017. Citizen Petition to the United States Environmental Protection Agency. April 26, 2017. <https://www.regulations.gov/document/EPA-HQ-OPP-2018-0805-0002>. **Federal Register**. 83 FR 66260, December 26, 2018 (FRL–9987–54).
3. SFIREG (State FIFRA Issues Research and Evaluation Group). 2022. SFIREG Treated Seed Regulation Issue Paper. August 31, 2022.
4. USEPA. 2023. EPA Response to 08/31/2022—(State FIFRA Issues Research and Evaluation Group SFIREG) Treated Seed Issue Paper. June 28, 2023.
5. USEPA. 2023. Labeling Instructions for Pesticide-Treated Seed and Pesticide-Treated Paint Products. September 2023. <https://www.regulations.gov> (under Docket ID No. EPA–HQ–OPP–2023–0420).
6. USEPA. 2012. T–REX Version 1.5 User’s Guide for Calculating Pesticide Residues on Avian and Mammalian Food Items. March 22, 2012. [https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/t-rex-version-15-users-guide-calculating-pesticide#Section2\\_1](https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/t-rex-version-15-users-guide-calculating-pesticide#Section2_1).
7. USEPA. 2019. Assessment of Usage, Benefits, and Impacts of Potential Mitigation in Stone Fruit Production for Four Nitroguanidine Neonicotinoid Insecticides (Clothianidin, Dinotefuran, Imidacloprid, and Thiamethoxam). December 6, 2019. <https://>

- [www.regulations.gov/document/EPA-HQ-OPP-2011-0865-1178](https://www.regulations.gov/document/EPA-HQ-OPP-2011-0865-1178).
8. USEPA. 2020. Revised Method for National Level Listed Species Biological Evaluations of Conventional Pesticides. March 12, 2020. <https://www.epa.gov/endangered-species/revise-method-national-level-listed-species-biological-evaluations-conventional#:~:text=The%20Revised%20Method%20for%20National,to%20develop%20BEs%20for%20pesticides.>
  9. USEPA 2022. Response to Public Comments Received on Draft Biological Evaluations for Imidacloprid, Thiamethoxam, and Clothianidin. June 2022. <https://www3.epa.gov/pesticides/nas/final/cloth-imi-thiam-rtc.docx>.
  10. USEPA. 2018. Benefits and Impacts of Potential Mitigation for Neonicotinoid Seed Treatments on Small Grains, Vegetables, and Sugarbeet Crops. August 30, 2018. <https://www.regulations.gov/document/EPA-HQ-OPP-2008-0844-1622>.
  11. USEPA. 2022. Pesticide Establishment Registration and Reporting. November 30, 2022. <https://www.epa.gov/compliance/establishment-registration-and-reporting>.
  12. USEPA. 2022. Tebuconazole Proposed Interim Registration Review Decision Case Number 7004. June 30, 2022. <https://www.regulations.gov/document/EPA-HQ-OPP-2015-0378-0095>.
  13. USEPA. 2021. Triticonazole Interim Registration Decision Case Number 7036. March 17, 2021. <https://www.regulations.gov/document/EPA-HQ-OPP-2015-0602-0039>.
  14. USEPA. 2022. ESA Workplan Update: Nontarget Species Mitigation for Registration Review and Other FIFRA Actions. November 2022. <https://www.epa.gov/endangered-species/epas-workplan-and-progress-toward-better-protections-endangered-species>.
  15. USEPA. 2022. Diuron Proposed Interim Registration Review Decision Case Number 0046. April 2, 2022. <https://www.regulations.gov/document/EPA-HQ-OPP-2015-0077-0065>.
  16. USEPA. 2021. 2021 Policy on Children's Health. October 5, 2021. <https://www.epa.gov/system/files/documents/2021-10/2021-policy-on-childrens-health.pdf>.

## VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879,

April 11, 2023), and was therefore not subject to a requirement for Executive Order 12866 review.

### B. Other Regulatory Assessment Requirements

Because this action does not impose or propose any requirements, and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various other review requirements in statutes and Executive Orders that apply when an agency imposes requirements do not apply to this ANPRM. Should EPA subsequently determine to pursue a rulemaking, EPA will address the requirements in the statutes and Executive Orders as applicable to that rulemaking.

Nevertheless, the Agency welcomes comments and/or information that would help the Agency to assess any of the following:

- Potential economic impacts of a rulemaking on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*);
- Potential impacts on Federal, state, or local governments pursuant to the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538);
- Potential federalism implications pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, November 2, 1999);
- Potential Tribal implications pursuant to Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000);
- As discussed in Unit III.C., potential human health or environmental effects on minority or low-income populations pursuant to Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994);
- As discussed in Unit III.D., potential disproportionate environmental health or safety effects on children pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997);
- Potential availability of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272).
- Potential energy effects pursuant to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply,*

*Distribution, or Use* (66 FR 28355, May 22, 2001); and

- Potential impacts in terms of costs and burdens associated with regulation options that the Agency may consider in developing a proposed rulemaking or other requirements, including potential activities and burdens associated with potential paperwork burdens pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

The Agency will consider such comments and information in developing options as it considers appropriate steps to address any applicable requirements.

### List of Subjects in 40 CFR Part 152

Administrative practice and procedure; Agricultural commodities; Environmental protection; Exemptions from pesticide regulation; Pesticides and pests; Reporting and recordkeeping requirements.

**Michael S. Regan,**  
Administrator.

[FR Doc. 2023–22558 Filed 10–11–23; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R4–ES–2023–0106; FF09E21000 FXES1113090000234]

### Endangered and Threatened Wildlife and Plants; 90-Day Findings for Two Petitions To Reclassify the West Indian Manatee

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notification of petition findings and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce two 90-day findings on petitions to reclassify the West Indian manatee (*Trichechus manatus*), or populations thereof, under the Endangered Species Act of 1973, as amended (Act). Two valid subspecies of the West Indian manatee, the Florida manatee (*Trichechus manatus latirostris*) and Antillean manatee (*Trichechus manatus manatus*), are currently protected under the Act as part of the threatened West Indian manatee species-level listing. One petition requests the Puerto Rico population of the Antillean manatee be listed as an endangered distinct population segment (DPS) and critical habitat be designated for this entity under the Act. The second petition