Briefing for the Decision on the Treated Seed Petition

Objective: To determine how to respond to a petition requesting that treated seeds not be covered by the treated article exemption.

Background:

- On April 25, 2017, EPA received a petition filed by the Center for Food Safety (CFS) with and on behalf of beekeeper, farmer, and public interest groups.
- Petition to:
  - Amend 40 CFR 152.25(a), "the treated article exemption," to clarify that it does not apply to seed for planting coated with systemic pesticides since the pesticides are intended to kill pests of the plant instead of pests of the seed itself[1]; or
  - Publish a final, formal Agency interpretation in the Federal Register stating that EPA interprets the exemption in 40 CFR 152.25(a) not to apply to systemic pesticide-coated seeds; and
  - Enforce FIFRA's registration and labeling requirements for each systemic pesticide-coated seed product.
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[1] Proposed amendment for 40 CFR 152.25 (shown in red). **Treated articles or substances**. An article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation, but excluding seeds for planting coated with a systemic pesticide intended to kill pests of the plant) if the pesticide is registered for such use.

- Deliberative Process / Ex. 5
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Regulatory History of Treated Seeds:

- Section 152.25(a) provides an exemption from all requirements of FIFRA (i.e., registration and labeling) for qualifying articles or substances treated with, or containing a pesticide, if:
  - the incorporated pesticide is registered for use in or on the article or substance, and;
  - the sole purpose of the treatment is to protect the article or substance itself.
- 2000 – "*Harmonization of Treated Seed Policies and Requirements in Canada and the United States*" policy document clarifies that seeds for planting which are treated with pesticides registered in the U.S. are exempt from registration as pesticides where: "for the protection of the [seed] itself means that the pesticidal protection imparted to the treated seed does not extend beyond the seed itself."
- Deliberative Process / Ex. 5

Decision Options:

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Other Considerations and Decisions

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Appendix A: Summary of Comments Received During the Comment Period for the Treated Seed Petition

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

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

Summary of Public Comments Against the Registration of Treated Seeds:

- If these treated seeds are registered it will lead to greater foliar insecticide use.
- Registering these treated seeds is redundant because EPA already has regulations regarding their use.
- With registration there would be an increase in price, bureaucracy, and paperwork for applicators and farmers diminishing the efficiency of treated seeds.

- The plant that grows from the embryo is considered part of the seed and it is therefore a treated article.
- There are significant benefits to seed treatment in early development, overall crop yields, and the amount of chemical used.
- Registration would have little to no positive impact on human health or environmental safety.