

## II. Background

Historically, EPA has approved claims for efficacy against viruses only as additional claims on certain antimicrobial products, such as those with sterilant and disinfectant claims, but not those that bear only sanitizer claims.

EPA received requests for guidance to add virucidal claims to products with sanitizing claims on hard surfaces. There is a significant interest from stakeholders and the public to add these virucidal claims to products with sanitizer label claims.

This draft guidance is intended to allow registrants to provide consumers with additional products that are effective against viruses including SARS-CoV-2. This draft guidance reiterates recommended test methods and guidance for the addition of virucidal claims to products that meet the criteria for hard surface disinfections claims in OCSPP 810.2200, Disinfectants for Use on Environmental Surfaces, Guidance for Efficacy Testing (EPA publication No. 712-C-17-004 (2018)).

Products should meet the test guidance requirements as described in OCSPP 810.2300 Sanitizers for Use on Hard Surfaces—Efficacy Data Recommendations (EPA publication No. 712-C-07-091 (2012)), (food or non-food contact sanitization) to treat hard, non-porous surfaces before a virucidal claim is added.

OCSPP test guidelines can be accessed online through <https://www.epa.gov/test-guidelines-pesticides-and-toxic-substances>.

Since there will be no changes to the test methods or performance standards recommended for virus claims, there is no concern about a reduced level of efficacy against viruses. Products that meet the basic criteria to allow for sanitizer claims and have data to support the addition of virucidal label claims, may be used only in non-healthcare use-sites in residential, commercial and institutional settings (e.g., cafeterias, waiting rooms) specifically on hard non-porous surfaces.

Additional anticipated benefits include the availability of more products with reduced contact times (time the surface must remain wet) and/or more products on EPA's Design for the Environment list that are also effective against viruses. The expansion of the availability of virucidal claims under this draft guidance will facilitate the addition of virus claims to products bearing only sanitizer claims.

## III. Do guidance documents contain binding requirements?

As guidance, these documents are not binding on the Agency or any outside parties, and the Agency may depart from it where circumstances warrant and without prior notice. While EPA has made every effort to ensure the accuracy of the discussion in the guidance, the obligations of EPA and the regulated community are determined by statutes, regulations, or other legally binding documents. In the event of a conflict between the discussion in the guidance documents and any statute, regulation, or other legally binding document, the guidance documents will not be controlling.

*Authority:* 7 U.S.C. 136 *et seq.*

**Michal Freedhoff,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA-HQ-OGC-2019-0478; FRL-11160-01-OGC]**

### Proposed Stipulated Partial Settlement Agreement, Endangered Species Act Claims

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

**ACTION:** Notice of proposed stipulated settlement agreement; request for public comment.

**SUMMARY:** In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022 Memorandum, *Consent Decrees and Settlement Agreements to Resolve Environmental Claims Against the Agency*, notice is hereby given of a proposed stipulated settlement agreement in the United States District Court for the Northern District of California in the case of *Center for Biological Diversity, et. al., v. United States Environmental Protection Agency, et al.*, No. 3:11-cv-0293 (N.D. Cal.). Plaintiffs alleged that EPA failed to comply with certain duties under the Endangered Species Act (ESA). Defendant-Intervenors join this proposed stipulated settlement agreement.

**DATES:** Written comments on the proposed stipulated settlement agreement must be received by August 16, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-

HQ-OGC-2019-0478 online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments, see the "Additional Information about Commenting on the Proposed Stipulation and Stipulated Dismissal" heading under the **SUPPLEMENTARY INFORMATION** section of this document.

### FOR FURTHER INFORMATION CONTACT:

Michele Knorr, Pesticides and Toxic Substances Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564-5631; email address: [knorr.michele@epa.gov](mailto:knorr.michele@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Obtaining a Copy of the Proposed Stipulated Settlement Agreement

The official public docket for this action (identified by EPA-HQ-OGC-2019-0478) contains a copy of the proposed stipulated settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed stipulated settlement agreement and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search."

#### II. Additional Information About the Proposed Stipulated Settlement Agreement

On January 20, 2011, Plaintiffs (non-governmental environmental organizations) filed a complaint in the United States District Court in the Northern District of California asserting

a single claim against EPA for allegedly violating section 7(a)(2) of the ESA by failing to initiate and reinstate consultation with the U.S. Fish and Wildlife Service (“FWS”) and National Marine Fisheries Service (“NMFS”) with respect to 382 pesticide active ingredients. After motions practice and an appeal to the Ninth Circuit Court of Appeals, the plaintiffs filed their fourth amended complaint on June 29, 2018 for failure to initiate consultation under ESA section 7(a)(2) for certain pesticide products containing 35 pesticide active ingredients. In October 2019, the parties entered a partial settlement agreement, in which EPA committed to a schedule to complete effects determinations for eight active ingredients and request initiation of any necessary ESA Section 7(a)(2) consultations with NMFS and/or FWS. This proposed stipulated settlement agreement incorporates all still outstanding obligations from the prior partial settlement agreement and resolves the remaining claims.

Among other provisions, the proposed agreement sets a deadline of no later than September 30, 2027 for EPA to complete final Biological Evaluations on the potential effects of the following eight active ingredients on ESA-listed species and designated critical habitat: acephate, bensulide, dimethoate, ethoprop, naled, phorate, phosmet, and s,s,s-tributyl phosphorotrithioate (tribufos); and to request initiation of any necessary ESA section 7(a)(2) consultations with NMFS and/or FWS. The proposed agreement also includes statements of EPA’s intent to take preceding actions, including: to complete draft biological evaluations no later than one year prior to the deadline for the final biological evaluations; to provide notice and a 60-day opportunity for public comment on any such draft; and, consistent with current practice, to conduct nationwide-scale effects determinations.

Additionally, the proposed agreement sets deadlines for EPA to issue certain ESA “strategies” that were contemplated in its work plan issued on April 12, 2022, entitled *Balancing Wildlife Protection and Responsible Pesticide Use: How EPA’s Pesticide Program Will Meet its Endangered Species Act Obligations*. These strategies aim to identify mitigation measures to address the effects of pesticides to ESA-listed species based on certain criteria that EPA has or expects to develop based on what it has learned from its ESA section 7 consultations to date.

The proposed agreement also includes, as well as other related commitments, a commitment by the

agricultural industry Defendant-Intervenors to organize and fund a workshop for interested stakeholders to explore how offsets may be used to address the effects of pesticide registrations on ESA-listed species and how such offsets could be incorporated into the pesticide registration process.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed settlement from persons who are not named as parties to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to enter the proposed agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the ESA or the Federal Insecticide, Fungicide, and Rodenticide Act. Unless EPA or the Department of Justice determines that consent should be withdrawn, the terms of the proposed agreement will be affirmed.

### III. Additional Information About Commenting on the Proposed Stipulated Settlement Agreement

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2019-0478 via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in

the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

Dated: July 11, 2023.

**Randolph L. Hill,**  
Associate General Counsel.

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL 11154–01–OAR]

### Announcing Upcoming Meeting of Mobile Sources Technical Review Subcommittee

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency (EPA) announces an upcoming meeting of the Mobile Sources Technical Review Subcommittee (MSTRS), which is a subcommittee under the Clean Air Act Advisory Committee (CAAAC). This is a virtual meeting and open to the public. The meeting will include discussion of current topics and presentations about activities being conducted by EPA’s Office of Transportation and Air Quality related to developing a workgroup charge around locomotives. MSTRS listserv subscribers will receive