

Region 7 Pre-SFIREG Meeting Minutes

Virtual meeting, October 20, 2020

Participant List: Nebraska - Tim Creger, Buzz Vance
Missouri- Dawn Wall, Stephanie Deeken, Kory Hubbard
Kansas - Duane Simon, Gene McFall, Gary Meyer, Shawn Plunkett
Iowa- Gretchen Paluch, Jeni Lara, Laura Castro
EPA - Candace Bednar, Mark Leshner, Jamie Green, Maren Taylor, Shawn Hackett,
Bethany Olson, Mike Daniels, Tracey Ramsey, Erin Weekley

Agenda

Introductions - Nebraska, Missouri, Kansas, and Iowa; EPA Region 7 (Program and Enforcement)

Region 7 states provided program updates on staffing, funding, legislation, and recent impacts of COVID-19. Most states reported at 'full' staffing level, with one state that has plans to add case review and investigator positions. States indicated use of the multi-purpose grants placed in several of the certification programs to involve work on manuals and modernization of certification program processing (forms, data, etc.). Legislative efforts are moving with stakeholder engagement and preparations for the upcoming session. Current funding levels in R7 SLAs are stable.

EPA Region 7 has reorganized to program and enforcement, and continue to meet with counsel. They were short FTEs after realignment and due to these recent changes, an updated contact listing will be shared. Operations are under continuing resolution until Dec 11th, with FY21 funds already awarded. EPA will be putting together an RFP with Ag IPM focus. Regulatory update – AEZ is moving its way through to be published this fall in the Federal Register.

Group discussion took place on online testing platforms including Everblue. Several states expressed interest in a follow-up call to discuss what options are available, whether these options will meet EPA certification requirements, and how to add a new testing 'method' while state plans are under review.

ACTION ITEM – Iowa will work with EPA to organize a follow-up call regarding online applicator testing.

ACTION ITEM - EPA agreed to provide an updated contact list to SLAs as there were staff adjustments after realignment.

ACTION ITEM- EPA to check on drawdown ability of grants during system upgrade –update sent to R7 SLAs.

SFIREG Chair Topics

1. ***FY2022-2025 FIFRA Cooperative Agreement Guidance:*** *OPP has gathered comments on the grant guidance from AAPCO and states by the August 2020 deadline. Now that comments have been provided to EPA OPP, please reflect on the topics and discuss any additional perspectives and comments related to program areas where you would like to provide additional feedback to*

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EPA OPP. How can SFIREG assist you in communicating with EPA specific suggestions and changes to the guidance? Are there any additional changes or additions suggested?

Region 7 states submitted a series of comments to SFIREG. See separate attachment.

A select Region 7 state did participate in a joint call with EPA OECA regarding historical work on PART and/or performance measures. Region 7 states acknowledged the importance of 'telling the story' of the enforcement programs and the importance of funding this work. In addition, states commented that it's important to incorporate updates in inspection hours and enforcement measures that reflect the state program work/experience.

- Pollinator Management and Bee Keeping Practices and Products:** Recent concern has emerged from R4 states and other states about how Pollinators are managed and concerns about bee keeping practices and products that might be causing issues. What issues do you see in your state and regions with regards to managed pollinator pesticide use practices, cases, and management where education, training, and pesticide labels and violations could be occurring?*

Region 7 states did not report any high-level pesticide use issues or concerns with pollinator incidents, or managed pollinator protection plans. Region 7 EPA provided an update on outreach efforts underway. Some discussion took place on whether states experienced on-going issues with disposal of treated seeds. No on-going issues reported at this time.

- Paraquat Labeling - Certified Applicator Requirement:** The recent changes to the label only allow "certified applicators" to make applications. Have the states in your region received any feedback regarding this requirement and impacts to the ability to get the training and make the necessary applications? Have you received questions regarding additional training and who can do what? What if any other frequently asked questions can you share?*

Region 7 states expressed concerns with timeline for the first year, looking for compliance guidance (closed container guidance) as well as differences in the labels that are found in the channels of trade or in-hand of the end-user. Different versions of the label can create confusion and more work for the states to fully implement changes during a transition.

In addition, some states will need to work/address transition as there are uncertified applicators working under, certified applicators.

- Dicamba 2020 Growing Season and Upcoming EPA Decisions:** We have been through the 2020 growing season, and how many reports of misuse have you received; how many enforcement actions have been taken; and what are the overall issues you're dealing with from 2020 or even previous years. What trends do you have in cases? Have the 2019 changes and training programs for the dicamba label made a difference? What are the states specific concerns regarding continued use of dicamba in 2020 and the next registration decision cycle in the fall of 2020? I have requested EPA OPP participate IF there is an update EPA OTT dicamba use labels. We will not have EPA OPP on the call if no news/updates are available.*

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Region 7 states discussed updates on number of applicators, incidents, and handling of cases throughout the season.

NE- season started early, about 50% of the amount claims as last year, (96 complaints, 60 investigations)

MO- season picked up around August, doubled complaints through mid-September (120 complaints).

KS- had about 120 claims with dicamba, many applications going on later in the year – they worked 33 of those, some claims with generic dicamba

IA- challenging season – record high misuse investigation with 329 total misuse investigations, 215 are linked to an auxin herbicide and 57 so far have been confirmed with dicamba OTT use (noted, more incidents reported with dicamba use in corn)

At the time of the Region 7 Pre-SFIREG there was no registration decision for products labeled for over the top use on soybeans and cotton.

[SUBMITTED AFTER 10/20/2020 – Interest in field studies/data and enforcement regarding new buffering agents. MDA has received new dicamba labels from Bayer and BASF seeking 2021 product registration. The agency is reviewing the labels at this time.]

5. ***Revised C&T Plans:*** *As the modified certification plans have been developed and submitted to EPA; how have your programs continued to adapt to C&T issues and topics especially during this COVID-19 pandemic? Are there any continued or lingering concerns/questions regarding the review process, and how can SFIREG assist you in working with EPA OPP? I have requested EPA R7 provide an update on state plan review timeline and have someone available to address questions on C&T regulations/legal, that come up during discussion.*

EPA Region 7 is working on detailed review of the 4 state plans. On 10/20/2020, written comments were provided in response to 2 states. The other 2 states will receive written comments shortly. EPA Region 7 timeline is to get plans to HQ by May 1. It was indicated EPA HQ has received 6 plans.

ACTION ITEM – Written follow-up will be provided from EPA regarding response to SLAs inquiry on RE: private applicator recordkeeping and exam requirements. Multiple SLAs requested to be cc'd on the response.

6. ***COVID-19:*** *With the evolving public health crisis, all states have been impacted to varying degrees. How have your programs continued to adjust to the pandemic and COVID-19 impacted your respective pesticide programs, inspections and investigations, C&T, and other programs. Are there any implications to your ability to meet your commitments under your cooperative agreement across programs? What if any assistance do you need from EPA?*

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Region 7 States shared updates and discussed multiple adjustments that have taken place under the COVID-19 pandemic including online training, extension of applicator certifications, adjusted inspection procedures (allowed electronic records to be submitted), adjustments to closed testing sites and switch to virtual private training and testing, drive-up applicator testing, and evaluation of online commercial applicator testing.

Some states indicated enforcement program activities are operating as under routine years.

One state indicated they are watching extensions of applicator certifications. If the pandemic continues, there is the possibility of reaching the 5-year limit.

- 7. **Issues in states with FIFRA preemption:** States in R8 and elsewhere have asked for SFIREG to assess the complex nature of FIFRA preemption. State lead agencies for FIFRA have historically had state primacy for FIFRA, act as co-regulators with EPA for FIFRA, lead the work to implement the EPA FIFRA Cooperative Agreements, create state pesticide laws and rules to regulate pesticides and implement associated pesticide programs. Preemption is the ability of one level of government to override laws of a lower level. Pesticides in many states are regulated solely by the State Lead Agency. There has been a movement in some states to allow the restriction of pesticide uses at other jurisdictional levels such as city or county governments. Are there issues and implications for your ability to work as the SLA, work with applicators and the pesticide industry, and what assistance do states need? Full SFIREG appreciates your assistance to fill out this survey to assist in creating the issue paper.*

Region 7 states were informed there are questions regarding preemption that other states are facing. For this reason SFIREG is looking into gathering collective feedback from the regions (may take place in a survey). No concerns were raised at this time with Region 7 states regarding preemption or attempts to override state pesticide programs from other jurisdictions (city, county, etc.).

Other Discussion:

Region 7 states discussed recent Section 18 requests involving antimicrobials and protective coatings carrying pesticidal claims. One state was recently approached for a Section 18, for American Airlines to use an antimicrobial for surface protection. There was a request for more information on the recent OPP alert to try and approve new claims through an expedited pathway.

States requested additional information from EPA R7 regarding new approaches, and whether or not there were plans to support states as these requests are taking place in multiple states (expanded product use in several states, not just regional).

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Action Item - Follow-up with EPA on what approach is ongoing with OPP related to the section 3 registration or additional support for multiple states.

Minutes prepared and submitted by Gretchen Paluch.

Finalized 11/16/2020