



SFIREG

State FIFRA Issues Research and Evaluation Group

March 23, 2023

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1200 Pennsylvania Ave. NW
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Submitted electronically via Regulations.gov

RE: SFIREG Comments: Docket EPA-HQ-OPP-0004-0115, EPA's proposed interim registration decisions for the following pesticides: Docket EPA-HQ-OPP-2016-0141 DCNA Proposed Interim Registration Decision, Docket, EPA-HQ-OPP-2012-0565 Norflurazon Proposed Interim Registration Review Decision Docket, EPA-HQ-OPP-2014-0004 Thiophanate-methyl and Carbendazim Proposed Interim Registration Review Decision

Dear Ms. Reaves;

The State FIFRA Issues Research and Evaluation Group (SFIREG) and its working committees provide a platform for the states and US Environmental Protection Agency (EPA) to resolve challenges for successful implementation of pesticide programs and policies. SFIREG serves as a permanent standing committee of the Association of American Pesticide Control Officials (AAPCO), which works to represent states in the development, implementation, and communication of sound public policies and programs related to the sale, use, transport, and disposal of pesticides. SFIREG and the Joint Working Committee (JWC) are made up of various State Lead Agency (SLA) managers and scientist from around the nation that have responsibilities leading state FIFRA cooperative agreement regulatory programs. SFIREG has been working with EPA in coregulatory processes since 1978.

On behalf of SFIREG and our JWC, we appreciate the opportunity to comment on the topics related to the four Pesticide Interim Registrations (PIDs) contained in the Docket EPA-HQ-OPP-0004-0115, EPA's proposed interim registration decisions for the following pesticides: Docket EPA-HQ-OPP-2016-0141 DCNA Proposed Interim Registration Decision, Docket, EPA-HQ-OPP-2012-0565 Norflurazon Proposed Interim Registration Review Decision Docket, and EPA-HQ-OPP-2014-0004 Thiophanate-methyl and Carbendazim Proposed Interim Registration

Review Decision. Our comment letter provides perspectives mainly related to the concepts and proposed mitigation policies for these PIDs. The proposed mitigation PIDs are essentially taken from the November 2022 EPA ESA Workplan Appendix update and placed in these PIDs without any additional science assessment, literature review, consultation with commodity and use groups, SLAs, SFIREG and impacted groups that would be responsible for implementing and enforcing these mitigation systems. There are a variety of items that are of concern that SFIREG encourages EPA to work out more thoroughly prior to placing these kinds of mitigation systems on pesticide labels. We also have comments about the Bulletins Live! Two (BLT) system and placing the phrases of “unauthorized take” on pesticide labels.

Bulletins Live! Two (BLT)

There is general widespread support from SLAs through SFIREG that specific label language referring to BLT is the correct and proper mechanism to notify applicators of changes with products for the protection of Endangered Species. Users and the regulators will need additional training on how to utilize BLT especially as new notices emerge. There can be concerns about the latest utilization of species ranges and boundaries, spatial coverages and the applicability of these areas to pesticide applicator use locations. BLT can be difficult to understand through a computerized mapping tool. Some of the spatial coverages will be tricky to understand and not all applicators and users will not be able to completely navigate effectively within an online computer application and platform. Improving the mapping tools and the functionality of BLT would be helpful. As it currently works, BLT is an inadequate geospatial platform and should be improved. We also recommend some kind of application that could be utilized on mobile devices. Growers, applicators, registrants, and regulators could all utilize an improved system and applications that could be useable on mobile devices.

As additional input was gained through the numerous months reviewing and discussing the EPA ESA Workplan Appendix Update, SFIREG had additional opportunity to gain an understanding of the knowledge that applicators have of the BLT systems. SLAs and SFIREG members from around the nation consistently reported that applicators and landowners have never heard of BLT let alone the requirements for mitigation systems to be required for the legal application of these pesticides. Applicators simply haven't heard of BLT and don't know how to use it. The EPA FIFRA Cooperative Agreement Guidance for years has had ESA topics and education on BLT as an optional pick list item for the grant process with SLAs. These tasks haven't been core cooperative agreement required tasks. There also has been little to no funding provided to SLAs, Pesticide Safety Education Programs (PSEPs), and other partner educators to train applicators on these topics. There has been little to no emphasis and funding for SLAs or PSEPs for this effort throughout the nation.

SFIREG suggests that EPA work to get these systems in place and fund SLAs, PSEPs, and other partners to accomplish these educational systems, guidelines, manuals, learning tutorials, training modules and videos, and other official guides. The system is very cumbersome, slow, and difficult to understand. SFIREG suggests EPA fund these efforts and take the time to create a process and design to inform applicators of geographically specific pesticide use limitations for the protection of threatened and endangered (listed) species and their designated critical habitat.

Some kind of phased in process for training of applicators, growers, landowners, commodity groups, and PSEPs is needed so that the regulated community will be best informed and be able to know when and where certain pesticides and endangered species combinations will have label limitations. EPA should provide further outreach training so that BLT works properly and applicators know how the proper use and record-keeping are supposed to work within BLT.

The use of the statement - Federal offense to use any pesticide in a manner that results in an “unauthorized take”

SLAs and SFIREG have concerns that the end use product label statements be consistent with what is outlined in the EPA Label Review Manual. There are concerns about the new language related to “unauthorized take” and the regulatory consequences of that kind of language. SLAs typically don't conduct investigations and regulate to determine “unauthorized take” of a pesticide. Until the spring 2022 labels for Enlist One and Enlist Duo were released, SLAs have been familiar with the regular Endangered Species Label statement from the EPA Label Review Manual. The Enlist type product labels in 2022 were the first labels where the phrase “take” was utilized. We suggest EPA reassess this policy and language in the Endangered Species statement on the label, and work with SFIREG further to communicate on these complex topics and processes.

These pesticide PIDs contain the proposal for the phrase related to “unauthorized take”, in the these dockets: Docket EPA-HQ-OPP-2016-0141 DCNA Proposed Interim Registration Decision, Docket, EPA-HQ-OPP-2012-0565 Norflurazon Proposed Interim Registration Review Decision Docket, and EPA-HQ-OPP-2014-0004 Thiophanate-methyl and Carbendazim Proposed Interim Registration Review Decision.

“ENDANGERED AND THREATENED SPECIES PROTECTION REQUIREMENTS:

It is a Federal offense to use any pesticide in a manner that results in an unauthorized “take” (e.g., kill or otherwise harm) of an endangered species and certain threatened species, under the Endangered Species Act section 9. When using this product, you must follow the measures, including any timing restrictions, contained in the Endangered Species Protection Bulletin for the area where you are applying the product. Before using this product, you must obtain a Bulletin at any time within six months of the day of application. To obtain Bulletins, consult <http://www.epa.gov/espp>. For general questions or technical help, call 1-844-447-3813, or email ESPP@epa.gov.”

The EPA Label Review Manual provides this kind of guidance for the endangered species labeling information, refer to Chapter 11, Section IV, subsection J.

- J. Endangered Species Label Statement, page 11-20 to 11-21:
 - If EFED, AD or BPPD has determined that a product requires endangered species labeling, EPA will request that the registrant amend its labeling to place the following

statement at the Chapter 11: Directions for Use 11-19 Label Review Manual beginning of the Directions for Use section under the heading "ENDANGERED SPECIES PROTECTION REQUIREMENTS:"

- G "ENDANGERED SPECIES PROTECTION REQUIREMENTS:" "This product may have effects on endangered species. When using this product, you must follow the measures contained in the Endangered Species Protection Bulletin for the county in which you are applying the product. To obtain Bulletins, no more than six months before using this product, consult <http://www.epa.gov/espp/> or call 1-800-447-3813. You must use the Bulletin valid for the month in which you will apply the product".
- This statement is intentionally generic and cannot be altered by staff absent the approval of senior OPP management. No geographically specific endangered species statements can appear on the label in conjunction with this statement, as it specifically references Bulletins. If geographically specific endangered species information appears on the labeling as a means of addressing the risks to listed species, EFED, AD, or BPPD should be notified as appropriate so they may incorporate any such geographically specific information into the referenced Bulletins.
- "ENDANGERED AND THREATENED SPECIES PROTECTION REQUIREMENTS: It is a Federal offense to use any pesticide in a manner that results in an unauthorized "take" (e.g., kill or otherwise harm) of an endangered species and certain threatened species, under the Endangered Species Act section 9

Examples of Pesticide Product Labels that reference BLT:

There was no mention of "Take" in the recent pesticide labels that are referenced in BLT!

- **Pesticide Product Label, XtendiMax With VaporGrip Technology, October 27 2020**
 - PROTECTING ENDANGERED SPECIES / PESTICIDE USE LIMITATION AREAS The use of any pesticide in a manner that may kill or otherwise harm an endangered species or adversely modify their habitat is a violation of federal law. Use of this product in a manner inconsistent with its labeling may pose a hazard to endangered or threatened species. When using this product, you must follow the measures contained in the Endangered Species Protection Bulletin for the area in which you are applying the product. To obtain Bulletins, no more than six months before using this product, consult <https://www.epa.gov/endangered-species/bulletins-live-two-view-bulletins> or call 1-844-447-3813. You must use the Bulletin valid for the month in which you will apply the product. It is a Federal offense to use any pesticide in a manner that results in the death of an endangered species.

- **Pesticide Product Label, Bolero UltraMax Herbicide Label**

- **ENDANGERED SPECIES** The National Marine Fisheries Service has determined that thiobencarb, when used in California according to the label and existing restricted materials permit conditions, is not likely to jeopardize the continued existence of endangered or threatened salmonid species, nor is it likely to destroy or adversely modify designated critical habitat of these species. To ensure and continue the proper use of thiobencarb on rice in California, you must follow the measures contained in the Endangered Species Protection Bulletin for the county in which you are applying the product. To obtain Bulletins, no more than six months before using this product, consult <http://www.epa.gov/espp/> or call 1-844-447-3813. You must use the Bulletin valid for the month in which you will apply the product. The use limitations in the Bulletins and linked Mandatory Pesticide Use Limitations document are adapted from those currently in force for thiobencarb under the restricted materials permit conditions of the California Department of Pesticide Regulation, with enforcement by the County Agricultural Commissioners.

Is it legally necessary for EPA to utilize the phrases that include the use of “take” on a pesticide label and in BLT? Can a legal pesticide application be proven to cause “take”, and who would have that role? We recommend that EPA utilize the regular endangered species label language that is outlined in the Label Review Manual and the type of labeling that has historically been utilized. SLAs will have difficulty assessing “take” as that is something that SLAs, and EPA for that matter, have never done in pesticide enforcement programs. EPA should work with SFIREG on these topics.

The Use of USDA Natural Resources Conservation Service (NRCS) Practice Standards as Mitigation Measures in BLT

It appears that EPA is taking a blanket approach to mitigation measures by adding the same identical “Runoff Mitigation” measures to the Endangered Species Protection Requirements for the pesticide labels contained in this docket. SLAs and SFIREG have concerns about the utilization of what are normally voluntary USDA Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG) Practice Standards [Field Office Technical Guide | NRCS - USDA](#) as Mitigation Measures in BLT, and applying those to each pesticide in a general approach for regulatory coverage. The following “Runoff Mitigation” from the EPA ESA Workplan Appendix, which are NRCS Practice Standards, are listed in each of the three PIDs for DCNA, Norflurazon, and Thiophanate-methyl and Carbendazim.

“RUNOFF MITIGATION “

- Users cannot apply this product unless one of the following conservation measures are in place prior to application:
 - Vegetative filter strip (30 ft minimum width)
 - Field border
 - Field terracing/ contour buffer strips

- Contour farming
- Cover cropping
- No/reduced tillage
- Grassed waterways
- Riparian buffer zone/ riparian herbaceous zone
- Vegetative/grassed ditch banks
- Runoff retention pond/ water and sediment control basin/ sediment catchment basin/ constructed wetland
- Strip cropping
- Vegetative barriers
- Mulching with natural materials
- Alley cropping”

Taking a blanket and uniform approach to a mitigation list, that appears to be more applicable toward larger commodity row crop situations, will be difficult to implement for all commodities, landowners, and applicators of these products. Conducting this type of regulation will be difficult for all cropping and specialty crop situations. Placing these NRCS Practice Standards in BLT for each pesticide presumably would provide the necessary protection for listed species and also provide regulatory coverage for EPA, registrants, and applicators. We have concerns about applying the same menu of measures over and over again without working through the specific details related to the complexity of agriculture, pest protection needs, and the specific needs of each listed species. This seems to bypass the complete science and rigorous FIFRA and ESA risk analysis that would normally take place. We support EPA using its FIFRA statutory authorities to advance the goal of avoiding jeopardy for listed species from pesticide applications and from pesticide applications in general. However, there should be scientific processes included where there is additional flexibility to each situation while still conducting assessments and label development in accordance with FIFRA requirements. Mitigation should be applied only if, at the conclusion of the FIFRA ESA risk analysis process and risk/benefit analysis, it is determined that they are warranted. Adding general mitigation measures onto labels through BLT should not be considered a foregone conclusion that the process was scientifically supported and will actually work on all farms and with all commodity situations.

We recommend that EPA make reference to the land management mitigation practices that are from the USDA Natural Resources Conservation Service (NRCS) as an advisable and voluntary options within a recognized Pesticide Stewardship Program and not make them BLT label mandated mitigations. We recommend that EPA reference the actual numbering system for the NRCS type mitigation measures that are suggested and listed in the workplan. NRCS is the federal agency that defines the practice standards in the NRCS Field Office Technical Guide (FOTG) [Field Office Technical Guide | NRCS - USDA](#). Each state has the opportunity to amend practice standards typically through their state conservation commission and make recommendations to each NRCS state conservationist and each NRCS State Technical Advisory Committee (STAC) in each state. In the EPA ESA Workplan Appendix, EPA is utilizing land management mitigations that are really NRCS practice standards from the FOTG, and EPA is also abbreviating or changing the intent and language to fit the workplan. Abbreviated and altered definitions of NRCS practice standards should not be used in EPA regulatory programs.

There are concerns this will jeopardize the processes by NRCS and state programs related to properly defining and implementing conservation practice standards, and the trust and work that it takes to gain land owner interest in complex voluntary cost share funding programs.

The FOTG contain the technical guides for each state and field offices to utilize. The FOTG sections contain the necessary information and references for state and field offices technical providers and planners to conduct their work with land owners. EPA should allow NRCS to define the practices and implement the work through the FOTG and cost share programs. For every practice standard the NRCS has very established sections that include: general resource references and manual, natural and cultural resources information, resource concerns and planning criteria, practice standards and supporting documents, and conservation effects. These FOTG practice standards are the scientific mechanisms for NRCS and conservation districts to work with land owners and producers for the conservation of soil, water, air, and related plant and animal resources. These practice standard systems are the foundational aspects of the FOTG and are applied specifically under cost share programs to support agriculture in managing agricultural and pesticide management for the protection of endangered species.

There are also numerous practice standards that are missing from the EPA ESA Workplan Appendix and these particular PIDs. In these PIDs and the Appendix, EPA is listing only a few practices as examples. Wouldn't it be more appropriate to reference the NRCS FOTG and/or list all the practice standards and allow the landowner and technical supporting conservation planners to assist the landowner in selecting the methods and practices that would work best for farm and situation? There are many more NRCS Practice Standards available, with numbers and defining elements that exist that could be utilized for the various cropping systems and pesticide use scenarios. There are many other practice standards that could be utilized and those include Pesticide Management Conservation System (595) and Irrigation Water Management (449). When working with landowners in dryland and irrigated land settings, those are two of the more important practices that are often discussed and utilized with landowners. Those two in particular are extensively utilized when NRCS does cost share work with growers related to pesticides and also for irrigated agriculture. Some states also have emphasized the use of Polyacrylamide (PAM) as an approved FOTG practice, which is the Anionic Polyacrylamide (PAM) (450) standard. The Anionic Polyacrylamide (PAM) (450) standard is commonly utilized in irrigated agriculture and can be utilized in a compatible package with Pesticide Management Conservation System (595), Irrigation Water Management (449), and other practices that involved vegetation, filter strips, and settling basins.

Land owners, growers, and applicators need to be able to work with NRCS and conservation districts to implement these practices and gain technical support and cost share opportunities. SLAs and their conservation and water quality agency partners that work to implement the states Clean Water Act Nonpoint Source Plans, already have extensive and successful programs that utilize the NRCS Practice Standards in cost share programs with landowners. Some states and SLAs have pesticide stewardship programs that work with landowners in watersheds or certain boundaries where listed species exist to implement education and conservation and NRCS based practices to reduce impacts of pesticides on water quality and listed species. When the resource concern is pesticide related, NRCS and conservation districts typically work with land owners to

focus on Pesticide Management Conservation System (595) to start with and then utilize the other complementary FOTG practices that are added based on the resources needs and the planning process per farm. The work is all based on the resource needs for each farm and the issues that are of focus. Each practice has a number and those are also contained within the NRCS FOTG. NRCS and conservation districts are responsible for working with landowners and farmers on implementing voluntary cost shareable practices from the NRCS FOTG, and the processes to implement these Best Management Practices (BMPs) can take a series of years to implement. EPA should let NRCS define these practices and allow the NRCS or Conservation District conservation planner utilize the entire Practice Standard while working with a landowner. The Practice Standards have a substantial amount of protocols for how they are utilized in planning processes. EPA should leave the processes and definitions intact and allow the NRCS to define and implement these Practice Standards with land owners, growers, and applicators. The NRCS has the experience and expertise with these Practice Standards and implementing the processes with the landowners.

We encourage EPA to work with NRCS, states, SLAs, and conservation districts to allow those local experts the opportunity to work with growers. The farmers and producers trust the NRCS and conservation districts to work with them to protect technical and cost share support. Turning these voluntary practices into regulatory based labeled requirements is a precedent never before attempted by a regulatory agency such as the EPA. This approach is contrary to each state approved Clean Water Act Nonpoint Source (NPS) plan and the voluntary approaches promoted by states and the NRCS. EPA's attempt to change this process will jeopardize the trust farmers have with NRCS and conservation districts and could invalidate NRCS programs, and the use of Practice Standards. Changing and utilizing incomplete definitions of Practice Standards will make the NRCS as well as the EPA processes subject to challenges and disputes. We suggest that EPA work to create a collaborative effort to fund research groups such as the USDA Agricultural Research Service (ARS), Land Grant Universities, SLAs, and others to further evaluate the use of NRCS FOTG Practice Standards for the effectiveness and efficacy as practices to protect ESA listed species from legal pesticide applications.

Many mitigations have been voluntary to date, but under these PIDs and the new EPA ESA Workplan structure, these practices would be mandatory and label driven through BLT. SLAs will have an extremely difficult time educating land owners and applicators how to implement BLT mitigation and also conduct the enforcement. There will need to be a phased in approach that relies heavily on education. A programmatic advisory component should be considered, to utilized state and local pesticide stewardship programs, which already exists or are getting developed further in states such as Oregon, Washington, California, and others. These Pesticide Stewardship Programs (PSPs) allow for local groups to be funded to create strategic plans and to enable growers and applicators to take part in programs (NRCS, stewardship, good practices, IPM, education, etc.) that guide them. A six month to one year period is not believed to be enough time to educate landowners and implement mitigation decisions and landscape changes. There is also a lack of funding available and a phased in approach would be beneficial.

Many of the farm Practice Standard decisions are based on numerous factors and are associated with the nature of voluntary BMP strategies and various items including: the farm operation,

farmer decisions, crops, crop rotation, soils, slope, topography, weather, rainfall, irrigation, on-farm conditions, soil health, equipment used, pests, nutrient needs, crop protection and input decisions, ESA species to be protected, and other BMPs or NRCS FOTG Practice Standards that might be utilized. Voluntary BMPs and packages of Practice Standards as BMPs should be a decision by the farmer, landowner, and contributing farm planner from consulting, and/or conservation district and NRCS staff where decisions are made that fit the farm, crops, soil type, crop, and many other factors. The NRCS FOTG and BMPs chosen should be technically and economically feasible, and acceptable to land owners to implement

In conclusions, we suggest EPA work to involve SLAs, SFIREG and the JWC to build a comprehensive and workable ESA and pesticide program that would provide for scientific support for mitigation practices that would work for SLAs, NRCS, conservation districts, landowners, growers, applicators, and registrants. We recommend a broader pesticide and ESA team that would involve SLAs, USDA NRCS, USDA Office of Pest Management Policy (OPMP), USDA Agricultural Research Service (ARS), conservation districts, agricultural land grant institutions, pesticide safety educators, and others around the country that have experience with pesticide mitigation for water quality and ESA protection. We suggest that these efforts be properly funded, similar to other recent USDA programs such as the USDA climate smart commodity work. We also suggest increasing the funding and opportunities for SLAs, PSEPs, and other education partners to work to get the education in place for these BLT and mitigation systems.

SFIREG and SLAs are focused on providing science based information and consistent regulations for EPA, the public, stakeholders, and industry. We thank EPA for the opportunity to comment and to express our concerns on this issue.

We look forward to working with EPA on these important science and regulatory processes. Thank you for your consideration.

Sincerely,



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