

Region 8 Pre-SFIREG Meeting Report

Submitted by Kima Traynham,
US EPA Region 8 SFIREG Representative
May 31, 2023

The Region 8 Pre-SFIREG meeting was held by teleconference on April 27th, 2023.

Participants:

Colorado DOA: John Scott, Matt Lopez, Neil Kittleson, Jolyn Morris

Montana DOA: Kima Traynham

North Dakota DOA: Jerry Sauter, Aubrey Sondrol, Luke Wagner, Eric Deltzer

NDSU: Andrew Thostenson

South Dakota DOA: Tom Gere, Joseph Farley

Wyoming DOA: Dale Heggan, Slade Franklin

CSKT: Brittani Clairmont, Jasmine Brown

Ft. Peck: Martina Wilson

Standing Rock: Jake Luger

Cheyenne River: Cody Nordvold, Delbert Longbrake

Region 8 EPA: David Cobb, Kimberly Pardue-West, Kevin Martin, Sherrie Kinard, Shawn McCaffrey, John Lozano, Clyde Wilson, Rebecca Perrin

We were joined by SFIREG Chair Gary Bahr, who discussed the effort SFIREG is making to combine forces with SLAs to provide more meaningful comments to EPA on pesticide registration decisions. Gary reviewed the last several months of comment opportunities, and potential opportunities for future training on EPA processes and sharing of valuable information between SFIREG/SLAs. An excellent conversation followed, with SLAs commenting that the comment turnaround is too fast for many R8 states to develop and work through required state processes for comments. 90 days would be ideal, 60 day period are just doable, 30 days are insufficient. Gary followed up by sharing EPA's tight schedule and a lack of flexibility to extend in many cases. States repeatedly expressed that meaningful comments take time. EtO was raised as a clear example of an important a.i., with a comment period too brief for meaningful comments; an expanded conversation on States concerns with the EtO proposal followed.

In addition to the State Updates which will be detailed below, EPA Region 8 provided updates on C&T Plan Review, Rodenticides & Chlorpyrifos (provided after the meeting in emails), ESA Workplan, and EPA Region 8 Budget and Program Updates, including Enforcement.

State Reports:

Colorado: C&T plan has been approved; working on rules. Pesticide Applicator Act completed Sunset review and has been extended through 2033.

Their legislative season saw expansion of the Pesticide Sensitive Registry, to include the sensitive individuals' place of work and school, and requiring the Department to have a database of the registry by 2024. CDA added that they intend to go beyond the mandate and include a mapping system and electronic notification system for applicators to use.

They saw a successful bill making Neonicotinoids (7 actives) "state limited use" products, which must be sold through licensed dealers with a few exceptions (pets, wood preservative), but do not require license for use.

They did see Preemption in this Legislature, did not expect it to go anywhere, but also expect it will be seen next legislature.

CO has moved to online systems for searching of pesticide licenses and pesticide complaint submission. CO is also offering electronic license application submissions that includes a system for direct communication with applicators in regard to those submissions and is using Ezri Survey 123 for inspections.

The CO Enforcement section has added an FTE to work through the backlog of cases.

Montana: Slow spring, better moisture, drought has improved although the NE corner is still dry. Winter wheat is fair to good and expected to improve. Moisture and cool weather is causing delays in planting. Pesticide programs back to fully staffed, with several new staff in ENF and C&T programs. Challenging for a few months, but turning out well, new field staff (3) coming on strong.

Renewal and recertification season was big part of that challenge, appreciated training opportunities shared by other states. Initial Core trainings prepared and in process with new staff in action.

MT has typically not commented on EPA proposals but does have an available vertebrate pest SME on staff; Stephen Vantassel has contributed to larger comment efforts.

MT's C&T has received third pass comments, hopefully has resolved most issues and had legal interns work on an initial draft for Rules to include with plan. Will be returning revised plan to EPA this week or next. The process in general has been and future implementation will be a big lift for Montana – big state, small programs at both MDA and MSU. Reciprocity is a complex issue, going through announced plans one by one. Suggest SFIREG might help by providing a clearinghouse for information, such as a list of state classifications/categories and basic certification standards, like exam passing scores, use of national core, etc.

North Dakota: Back to fully staffed in Enforcement after seeing some turnover. Last year was pretty average, not a lot of cases or complaints.

ND State Lab is doing pesticide analysis, starting this season with water samples and adding soil and foliage next year; additional equipment purchases required to do so, and have submitted grant request. ND Legislative season wrapped up: no issue and good on funding.

ND has made a concerted effort to comment on EPA releases; it's a big lift, particularly those provided on the ESA workplan.

They continue their water monitoring program, doing surface water samples six times per year. Saw some increase in levels over the last year, nothing of concern. They did some sediment core sampling last summer but weren't confident in the results on the first go.

They have made some progress on the C&T plan, meeting with their pest control board in the next month. Andrew Thostensen shared that while they had a verbal ok from EPA HQ, they need approval from the Pest Control Board before they can formally submit. Hope to submit in June for approval, and feel they are "very close."

South Dakota: Planters are rolling, and the weather is not as dry, a better start.

Certification classes are wrapping up for this year.

The legislature ended in March; one bill pertaining to pesticides regarding extending length of license by one month.

SD's Certification and Training plan was approved in November/December; they are working on the Rule revision process: public meetings in May, Interim Committee for Rulemaking in mid-June; back to Legislature in July as the final step. They do not foresee issues getting it finalized.

SD has added two FTEs to their registration program and are behind a little but catching up.

For Dicamba, SD has a label required cutoff date of 6/20; that label change was approved mid-December.

Utah: Unable to attend meeting; no response when contacted.

Wyoming: Growing season is a month behind in much of the state, have a big snowpack and expect flooding to come.

Certification plan has their draft approved and in the “clean-up” process now; will submit for approval within next month, described as a big learning event for both state and EPA.

They have a staff vacancy and are dealing with a hiring freeze. Asked about cross-state training for staff in their Powell office.

WY provided comments on the ESA workplan; concerned about the picklist and said they already had seen the picklist being included on labels – mentioned concern at what could be implementation before comments are in or considered.

Requested extension on Rodenticide comment period, as they see significant implications and need additional time to prepare comments.

New staff in their programs: learning curve for those folks as they work to understand grant process. They are updating WY policy on course approvals for CEUs.

WY expressed frustration at Federal agencies (BLM) other than EPA doing additional risk assessments for applications on federal lands. They are expecting to see an influx of Out of State applicators in response to BLM plans to start large landscape weed control projects for grassy weeds.

WY raised concern that with the announcements of approved C&T plans, all with various implementation schedules, reciprocity was hard to determine, seemed like it might be three years before it could be tackled if they wait for everyone’s plans to be approved and available for review. Asked for feedback on how other states were addressing.

Specific SFIREG Topic Discussions:

- **SFIREG processes for providing comments to EPA on significant regulatory processes:** Primary comment on this topic was “meaningful comments take time,” and consistent view that current comment periods are not sufficient. Multiple states saw this as the primary issue on this topic. MT suggests Stephen Vantassel as available SME on vertebrate pest topics.
- **C&T Plan approval processes and the feedback from EPA Regions and Headquarters:** Wide variety among R8 states as to where in the approval process, from approved and working on rule revisions, to plan not yet submitted for first review due to state process.

What issues and topics exist to have coordination and communication between SLAs, EPA, and Tribes? Determining reciprocity will be big lift for states.

How can SFIREG and AAPCO assist? Suggestion that SFIREG or AAPCO could host a clearinghouse of information on individual state certification plans. Suggestions for items to include: state classifications/categories, base certification requirements (passing exam score, use of National Core materials, certification period length)

- **ESA Workplan concepts for mitigation, labels, and Bulletins Live! 2:**
 - Jake Li and Brian Anderson, both EPA, presented on the ES topic; robust conversation followed.
 - Jerry Sauter, ND, has joined the ESA Workgroup.

What are the current issues and/or questions for the implementation of the concepts in the EPA ESA workplan and the mitigation strategies proposed?

- Concern about the picklist enforceability (agronomic practices) and that SLA has already had seen the picklist being included on labels – concern at what could be implementation of proposed actions before comments are in or have been considered.
- Discussion of Spray Drift Buffers /Wetland Easement: On some wetland easements during dry years ground can be planted/plowed, and expectation was expressed that buffers surrounding these will be very contentious. Could have significant impacts on landowners' willingness to renew or create wetland easements. Several states saw this as big concern with significant potential negative impact on habitat and ES.
- Runoff Mitigation – Concerns for Enforceability – Inspectors are now needed to be land use managers and would have to go out after every big rain to check for compliance. Also described as difficult or not enforceable.
- ND Comment: Some mitigations not viable, not a real option in their state. Would like to see wind directional buffers.
- Surface water monitoring should be considered, especially when SLAs have data.
- Loss of land available for Ag production needs to be mapped and considered: risk of loss of food production not considered, potential for weakened food security, view that these are not included in decision making process. EPA staff informed these are considered in other parts of the process (FIFRA evaluation, other EPA sections outside of ES)
- Very important for states to get additional funding for specific ES training for staff – see a need for 'Crop Advisor' level of agronomic knowledge for inspectors, based on mitigations/picklist.
- Request for access to previous months' bulletins on BL2, for use by enforcement staff.
- Better species mapping was requested, specific range details needed from the Services so that restrictions can be more specific, not huge general swaths where the ES might be present.
- Comment that a significant dialogue between SLAs and EPA is needed on enforcement in this area.
- R8 EPA indicated they are planning to do an ES project: species of concern, cross section of data, understand uses affected, seeking to identify pinch points. Collaborative approach to protect both ES and Ag production. Summer Intern project.

How will SLAs work to implement the mitigation measures, ESA label statements, ESA BEs and BiOps, and Bulletins Live! 2?

- Concerns about enforceability in general.
- Montana feels this will have little impact, as most of the BL2 ESA have remained consistent for several years, pertaining to rodenticides. MT doesn't have some of the products/crops impacted by ESA concerns, looks to be similar for several R8 states.
- MT Tribal (CSKT) representative shared it was difficult to get FWS out to do surveys, narrowing range data might help and would like to see FWS contact number added to BL2 or another option to achieve.

Should there be a SFIREG issue paper for the June SFIREG meeting and letter sent to EPA specifically related to this topic?

Some R8 SLAs have commented independently on ESA workplan; no specific answers to this question.

Do SLAs have further information on how mitigation measures for the Enlist One and Enlist Duo products been implemented?

None reported.

• **Rodenticide PIDs and Regulations:**

Are there additional topics related to rodenticide regulation that have emerged after the comment period for the Proposed Interim Decisions (PIDs) closed on February 13, 2023?

SLA reported having requested extension on Rodenticide comment period, as they see significant implications and needed additional time to prepare comments.

- **SLA Updates on experiences with the current FIFRA Cooperative Agreement, Funding, Reporting, Staffing, Credentials, and other administrative topics:**

Are there current topics that need some attention also?

None reported.

- **Chlorpyrifos:**

Are there any additional topics or issues to be discussed?

SD Comment: Not much we can do when it is a federal court order regarding the tolerances to food crops. Options are very limited for sunflower growers and in SD we are seeing a lot of insect resistance to the other insecticides. Some growers have told me 20-30 percent yield reduction because of seed weevil infestations and products not controlling the insects.

Other R8 states were interested in information that was shared by EPA R8 in early May regarding the return of existing stocks that are in the hands of end users and distributors to registrants.

- **Atrazine Interim Registration Decision:**

What questions and concerns do SLAs have related to Atrazine and mitigation measures strategies? Is there anything new to share or learn?

SD Comment: EPA needs to listen to the states regarding atrazine issues and stay with the decisions made a couple of years ago regarding the safe level in water. Growers will not change their farming practices to adjust to a pesticide label. Inspectors will need additional training to do an investigation when an atrazine product is used. Atrazine has been around for decades and is proven and current label requirements are sufficient.

Other R8 states have repeatedly expressed frustration that SLA water sampling data, which is more recent and more locale-specific than that used by EPA, is apparently not considered or used by EPA.

- **Dicamba:**

What questions and concerns do SLAs have on the Dicamba regulatory topic?

Comment: Applicators are not taking the training. One of the primary label violations when we do an investigation.

Updates from SLAs on Dicamba regulation and cases for 2022 and into 2023?

SD has a label required cutoff date of 6/20; that label change was approved mid-December.

MT has no OTT uses; only complaints related to Dicamba seen are in turf management, typically residential.

- **Bilingual Labels:**

1. Does your state currently work on labels with Spanish? No R8 states reported currently working on Bilingual labels; comment was not received from all.

2. Any additional talking points on Bilingual language labels?

- How will EPA know form of Spanish to use as dialect?
- Another mandated EPA issue without funding for the states.

3. Additional questions:

a. **SLA perspectives on implementing the bilingual language work with EPA and industry going forward?**

SD Comment: This requirement may further delay product registrations at the state level, our stance in the past is applicators must be able to understand the English language and understand all parts of the label. We do not allow an interpreter when someone who only speaks Spanish to take the exam. We do not run into this situation very often. Maybe once a year. SD does not have supervision; all applicators must be certified to make pesticide applications.

MT comment: Thus far has not been significant, mostly English-speaking workforce, but for the population of non-English speakers, other languages as significant as Spanish in many areas of our state.

b. **Would a survey be helpful to ask with further input as EPA gets closer to establishing their process?** Yes, survey would be helpful.

c. **Interest and ability for SLAs to be a key contributor to the PRIA 5 bilingual language work.** None offered.

How should SLAs be involved with certifying and approving translation?

- SLAs need to be involved and given direction from EPA on these changes.
- Each state should be able to decide if they wish to approve bilingual labels or not.

d. **Barriers for SLAs to conduct any additional work on this topic; such as review labels, approve labels, and online products?**

SD: All these will be barriers. I do not have bilingual staff to cross check label language and will be problematic.

MT: No bilingual staff; few resources available.

e. **What are key perspectives from SLAs that can assist SFIREG in future discussions with EPA on this topic?**

Comments:

- Multiple dialects of Spanish used. Other languages spoken by workforce in some areas.
- The bilingual labeling requirements should be up to each state if they wish to approve bilingual labels or not.
- Will the certification and training need to be bilingual as well? Will state testing be required to be bilingual?
- This is another mandated EPA issue without funding for the states.

- **New and Ongoing Issues: Are there any new Issues or ongoing issues that might develop into White Papers or Issue Papers?** None proposed.

This meeting ends Montana's term as R8 SFIREG representative; it has been a pleasure. ND is taking over that role and Aubrey Sondrol will be the next representative. We've had a meeting already to start that hand off, and Aubrey plans to attend the June Meeting in TN.

Our next pre-SFIREG meeting will be in person, held in Denver in September; details to come.

Kind Regards,

Kima Traynham, Montana Department of Ag