

U.S. EPA Region 9 Pre-SFIREG Meeting Summary
Prepared by Charles Moses, Nevada Department of Agriculture
On June 2, 2016

On Wednesday, May 18, 2016, EPA Region 9 representatives of states, tribes and territories met to discuss issues of mutual concern. Also in attendance were EPA Region 9 and EPA Headquarters staff members.

Mr. Don Lott of EPA Headquarters began the meeting by giving an overview of the agency's enforcement activities related to FIFRA 25b products. EPA is now looking at 25b product labels and taking enforcement action against companies whose labels do not meet 25b exemption guidance established in the PR Notice. At least one enforcement action was taken against a company which claimed to meet the 25b guidance and whose product contained an active ingredient which requires registration under FIFRA Section 3. Part of the problem in finding products claiming 25b exemption which contain active ingredients not on the 25b list is that laboratory resources that would be needed to detect products would be prohibited. If states detect these violations, they can be forwarded to EPA for review and enforcement action. Don also stated that EPA will consider taking enforcement action against companies manufacturing products similar to "leaf shines" which contain active ingredients with no other uses except for pesticide.

The RUP certification rulemaking (although not finalized) generated discussion, mostly in opposition to the proposal. EPA cannot yet comment on what the final regulation will look like. However, it was stated that EPA has heard objections from the states on the original proposal, and the message was made "loud and clear" that this proposal would not be workable on the state level, for a number of reasons. It was stated by meeting participants that impacts to state agencies administering the RUP program would be significant, costs were underestimated by EPA and the way this rulemaking took place has damaged the partnership between EPA and SLAs. In a previous discussion at the last full SFIREG meeting, a statement was made that many of these changes were discussed during CTAG meetings and that they should be no surprise. A response given by a participant in our meeting was that CTAG discussions were taken out of context. CTAG recommendations are made, given an "ideal world" situation, which we certainly don't have at this time. An issue paper was drafted for submission to full SFIREG asking EPA to consider reintroducing the proposed rule and offering another opportunity for comments, instead of adhering to an artificial or political deadline to "get the rule done".

A pollinator protection update followed the certification discussion. R9 has finalized a brochure and infographic with basic tips for consumers to protect pollinators, which is available in print and online (<https://www.epa.gov/pollinator-protection/basic-tips-consumers-protect-pollinators>). The brochure was created in response to an outreach gap expressed by Region 9 states in a fall 2013 survey, however the information in the brochure is applicable to all S/T/T nationally. Region 9 currently is focused working with tribes to develop a template for tribes in Region 9 to assist them in developing voluntary pollinator protection plans. R9 plans to focus on tribal concerns including

unmanaged pollinators, habitat enhancement, stakeholder participation, challenges, best management practices, and potential funding resources for implementation.

A discussion of enforcement priorities was led by the EPA Enforcement Division following the pollinator discussion. Worker protection is an enforcement priority and recent enforcement actions were taken by the region in both Nevada and Hawaii. EPA Region 9 Enforcement Division staff members have conducted joint inspections with cooperators (states and territories) in the region, and will be working closely with tribal entities in the future. Other national priority enforcement areas include imports and the sale of unregistered pesticide products.

All cooperators are required to use the FIFRA template when submitting grant applications beginning this year; the template has been approved by OMB. Grant funding remains flat. Additional funding will be made available through multi-purpose grant opportunities and are available. Also, applicants can submit supplemental funding proposals prior to the grant application deadline of June 3. Cooperative agreement guidance to assist applicants is available along with the updated template (which includes new performance measures). New cooperative agreement guidance will be available in 2018; instructions for completing the template and current cooperative agreement guidance can be found at: <https://www.epa.gov/compliance/fiscal-year-2015-2017-fifra-cooperative-agreement-guidance>.

Meeting participants were reminded that the new provisions of the Worker Protection Standard (WPS) will be enforceable beginning on January 1, 2017. Two elements are still in development and will not be enforceable until they are finalized. These include the content of the handler/worker safety program and the content of the safety display. Until the 2 elements are completed, the existing WPS content provisions apply. Training of workers and handlers must be completed annually, beginning on January 1, 2017. The EPA interpretation of the agricultural exclusion zone (AEZ) was discussed during the meeting as well.

As part of the WPS discussion, participants asked if WPS provisions would apply in cannabis cultivation facilities. The answer given was that if a cultivator uses a product that references the WPS, then WPS provisions do apply. FIFRA enforcement action (and state enforcement action) can be taken for WPS and/or label provision violations.

An open discussion followed for states, tribes and territories in attendance to communicate concerns or ask questions on specific issues affecting them. The representative from Guam stated that a major challenge at the present time involves the sale of small quantities of pesticide by pesticide dealerships to local users. The problem is that many agricultural pesticides come in larger container sizes and most local growers only farm small plots. To avoid buying larger containers, applicators are purchasing home use products with the same active ingredients of the agricultural products they traditionally use. Dealers are looking into repackaging pesticides into smaller containers and then selling the smaller containers. To be legal, this would require a pesticide dealership to have a repackaging agreement with the primary registrant and become

registered as a producing establishment. Possible solutions include working through local agricultural cooperatives and/or speaking with pesticide registrants about packaging agricultural pesticides in smaller containers. It was stated that smaller container packaging would likely result in an expensive product. Some contact with pesticide registrants will be made to discuss this solution.

Mr. Jack Peterson of the Arizona Department of Agriculture was selected as the next EPA Region 9 SFIREG Chairman. His appointment begins immediately following the next full SFIREG Meeting, which is scheduled for June 13-14, 2016.