

The Importance of Process: A Depiction of the Decision Points, Data Needs and Stakeholders in the Evolution of a State Mitigation for Pesticide Use

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Abstract

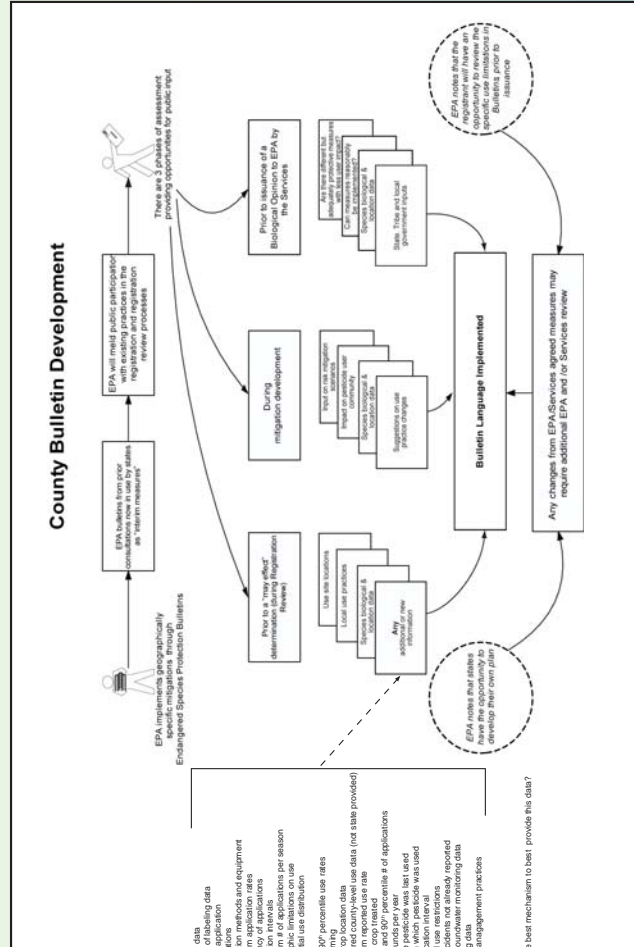
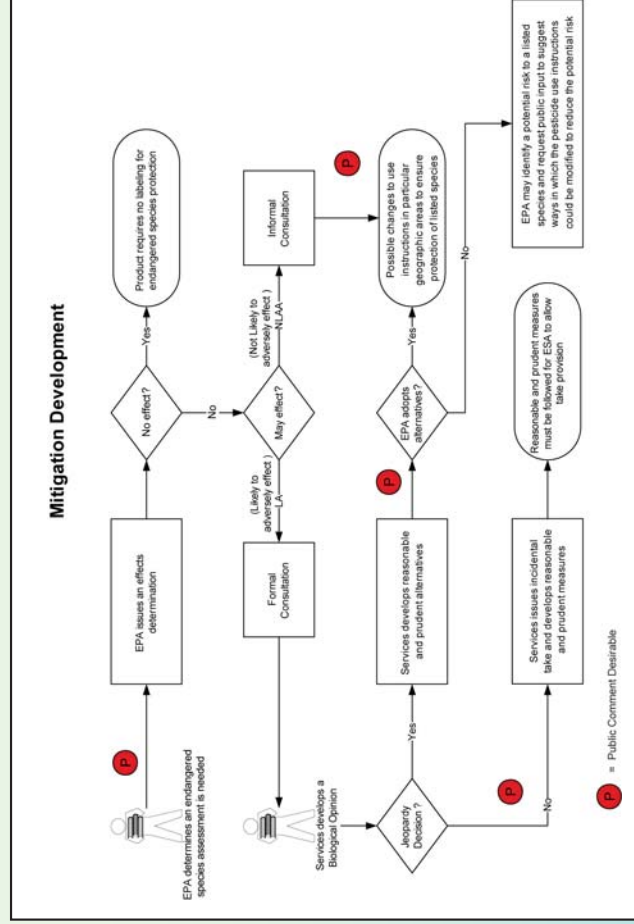
In taking pesticide registration or Registration Review actions as governed by the Federal Insecticide, Fungicide and Rodenticide Act, the Environmental Protection Agency's Office of Pesticide Programs (OPP) also must comply with the Endangered Species Act (ESA) by ensuring that its registration action is adequately protective of listed species. This is a multidimensional process involving many layers of evaluative steps and stakeholder review. In particular, understanding the role of the federal agency versus that of the state is critical as the process unfolds. This presentation seeks to identify, from the pesticide registrant's viewpoint, the evolution of listed species protection through the registration process, concentrating on the roles the states have in the assessment process (data provision) as well as in the development of protections needed for the species. It will examine the role of the states in species protection (Registration Review) and in species protection (Emergency Action). The role of the states in species protection is to provide data and information for the development of the data needed to support the registration process, and where there are needs for clarity, communication or feedback. In certain circumstances, OPP or other states may undertake a refined analysis for endangered species in order to determine if any presumed risks are actually likely to occur. Where the presumption of risk cannot be fully refuted, OPP or a state may develop local mitigations that will be communicated in the form of a county bulletin or other local instructional program. Upon reaching the point requiring development of a local mitigation, all local conditions, application practices and possibly even overlapping local restrictions come into play, and another dimension of complexity is encountered. Which of the factors in this complex array are critical not only to species protection but also to reducing impact on the production of food, fiber and forest products (as required by Section 1010 of the ESA) will be addressed and ideas for how to approach what are currently unanswered questions about the process will be offered.

FIFRA Endangered Species Pesticide Program

In a Federal Register Notice (70:166332), EPA gives a thorough description of the events that take place between the issuance of a new or amended registration and the development of a final county bulletin or local instructional program for the mitigation of risk to endangered species from a given use of a pesticide product. That process is generally depicted in the flowchart to the right. However, since the issuance of the policy notice, much has changed both at EPA, in the registration process and in the method of evaluation of potential risk to endangered species. Changes which could affect the literal interpretation of the ESP policy and how states implement it include:

- Redefinition or re-alignment of roles of the Field and External Affairs Division (FEAD) and Environmental Fate and Effects Division (FEED) of EPA
- Development of subsequent changes to the Department of Interior's Counterpart Regulations on the pesticide consultation process
- Revised definitions and role of "interim measures", as evolving through litigation and its potential expansion to regulatory applications
- Endangered species effects determination in the Registration Review process
- The precedence set by the number of and process used for litigation-driven effects determinations
- Still unclear definition of the role of USDA in the process

What states are doing now, how the picture may change, and the implications of change are important to practical implementation on the state level. Emerging issues and how they might be addressed by the states will be explored.



Bringing additional context to the diagrams above could improve the documented, transparent, and sustainable process used to derive state-implemented mitigations.