

SFIREG Meeting topics for June 7-8, 2021 Full SFIREG

Below are the combined comments to the topics assigned from Washington, Oregon, Idaho and Alaska Departments of Agriculture.

- Pet collar issues, cases, and reporting to EPA; including products with insecticides such as flumethrin and imidacloprid.

WSDA ODA, ISDA and ADA has no known reported cases with the current pet collar issue.

- Dicamba registrations and regulation.

At this time, **WSDA, ODA, ISDA and ADA** are not aware of any big issues with OTT dicamba.

- 24(c) and 25(a) EPA and state registration processes.

ODA – Oregon has previously granted 24(c)'s to add an application. For example, if the label restricted use of a product to two applications per year, ODA has issued a 24(c) to add a third application. ODA is concerned as to whether such 24(c)'s would be disapproved in the future for not satisfying EPA's requirement that 24(c)'s must be used to register "additional uses of federally registered pesticides."

ODA has recently received several "SLN Amendment Acknowledgement Letters" from EPA, for SLN labels that had been submitted to EPA by the Section 3 registrant in conjunction with Registration Review of the pesticide ingredients. In these cases, ODA was blindsided; prior to receiving the acknowledgement letter, we were completely unaware that an Oregon SLN label was being amended and under review. There seems to be a disconnect here and lack of communication between the EPA Pesticide Re-Evaluation Division, EPA Registration Division/Minor Use and Emergency Response Branch, registrants, and the SLA about the SLN label amendment process. Per EPA's own guidance for SLNs: Request to Amend a 24(c) Registration. In order to process an amendment, EPA must receive the amended 24(c) registration from the state that issued the 24(c).

ODA exercised its authority under Section 24(a) in its recent filing of two administrative rules. One rule limits the use of chlorpyrifos in Oregon. The other amends an existing rule regarding the listing of restricted use pesticides, so that the rule better aligns with statute.

WSDA – Does not have any 24c registrations that further limit the FIFRA section 3 label. They have used the provision in 24a to limit the FIFRA section 3 label via our rulemaking. (for instance, their state restricted use pesticides.)

ISDA - No impact related to enforcement Nothing significant concerning the 24(c) process other than everything is emailed currently and there seems to be a lag in the approvals. Idaho has no 24c registrations that further limit the FIFRA section 3 label.

Idaho did not use the provision in 24a to limit the FIFRA section 3 label via our rulemaking. Idaho used the 22-101A - (IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(5), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rules that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government.) (For instance, Idaho's state wind speed has broader restrictions for pesticides that do not have wind restrictions on the pesticide label.)

ADA - Alaska has only 2 Special Local Needs (24[c] products). Registration issues are not a problem in AK.

- PFAS/PFOS in containers, pesticide products, environment, human health, laboratory testing support, and other issues to assist SLAs.

ODA - At this point states are not sure on magnitude of problem. Currently, at least four pesticide active ingredients are listed on the EPA's PFAS master list (https://comptox.epa.gov/dashboard/chemical_lists/pfasmaster). It is noted that EPA is working on developing a regulatory definition with respect to pesticides for PFAS. We would like to encourage EPA to factor in the toxicological and environmental fate profiles of chemicals, and not just chemical structure, when developing this definition. Consultation with AAPCO on any draft definitions would also be appreciated.

WSDA - This is a serious concern for the state in general. We need more information from EPA on their investigation. My understanding is that they have narrowed the PFAS contamination to the fluorination process used in the HDPE containers. I understand that EPA may be looking at establishing a tolerance for PFAS/PFOS because of the container issue. I have concerns with how the container recycling program is disposing of these containers (So this could be a WASTE issue)—and if they are being recycled – is the PFAS contamination is entering the environment via that route. We don't have a clear idea of how big this problem is, as many Ag and commercial industries use HDPE containers that may be contaminated. (Fertilizers, Spray Adjuvants, Liquid Soil Amendments—even some food processing and bulk health items.)
Could have a big impact on unwanted detections in certain pesticides and could make the contains unfit for recycling.

ISDA - This could be an area of concern for the Idaho and others in general. It started out as a container issue on with an insecticide that Idaho did not have. We need more information from EPA on their investigation on this (forever chemical). Idaho does not allow burning of containers, but it is allowed on many containers, causing potential ground water issues as well as PFAS or its breakdown constituents in the environment. We also have concerns with how the container recycling program is disposing of these containers as they are being recycled, or added into the state's many landfills. Because once tripled rinsed, the container is now solid waste. Not sure of the magnitude of how big this problem may be. Need to have clearer guidance as soon as possible on it.

ADA - . This issue has not been a concern yet in Alaska, as the original containers/products in concern were mosquito control products that were not shipped to Alaska.

- COVID-19 EPA response and registration topics for disinfectants, and devices.

ODA - Oregon continues to receive a high volume of applications to register new disinfectants. To put this in perspective, in 2020 we saw a net gain of 120 new companies and 472 new products. These numbers are much higher compared to 2019, when we saw a net gain of only 10 new companies and 114 new products.

The vast majority of new product applications are for supplemental distributor registrations. We are pushing 200 distributor registrations for certain EPA Reg. No.'s. Most of these registration applications are submitted incomplete. EPA Stamped/Accepted Labels are frequently not provided. Several applicants have had to be told what an EPA label is and how it differs from a market label. A large number of these distributor labels require editing to comply with the EPA label. For some products, this has amounted to 4 or 5 rounds of edits over the course of several months. Overall, this has created a significant burden for us as an SLA.

Enforcement referrals have been made for products making off-label claims of efficacy against SARS-CoV-2 (including claims of residual efficacy), and for providing other off-label directions (e.g., recommending use on skin). Some of these referrals have been for antimicrobial surface protectants.

WSDA - Washington state is still expediting COVID disinfectant registrations –averaging 1-2 day turnaround time. We continue to see issues with label claims that are not allowed, especially with supplemental distributors, and with missing (or condensed) directions for use. (For instance, the master label states 5 minute contact time for bacteria and 10 minute contact time for viruses—BUT the market label states 5 minute for bacteria and viruses.)

- Concern of fraudulent products being promoted as COVID effective
- Unlicensed companies advertising, providing advice and applying disinfectant products solely for virus control
- Misbranding of products being repackaged under different names
- Properly labeling as to type of device to use
- Some devices may not be the proper method of application
- Untrained and/or unlicensed persons making the applications
- Applicators not following label directions
- Applications, while within label, being applied where people are present

ISDA - Idaho saw a significant amount of increased cases related to unregistered disinfectants in the Idaho marketplace during the COVID-19 epidemic. Which then caused an increase in SSUROs issued in FY21 in comparison to previous years. SSUROs and response are more time consuming in the review/response process versus warning or regulatory letter actions.

Some of the more common issues that were observed:

- Fraudulent products being promoted as COVID effective
- Misbranding of products
- Improperly labeled

Device:

- Only one device found, and it was allegedly never used. The company was “renting” ozone machines to people to fumigate their homes with, claiming that it would kill the Coronavirus.

ADA - . Alaska continues to seek definitive answers from EPA regarding pesticide devices, particularly regarding “on-site” use.

- EPA Credential issues and survey.

ODA - FedTalent being new for us they are in the learning phase.

WSDA - Compliance staff getting used to the new FedTalent website for annual training and tracking of Credential recertification requirements and reporting for 3-yr Credential renewals

ISDA - Staff is starting to get use to FedTalent. It is harder for staff to meet two sets of hazmat certification and recertification. One for EPA (federal credentials) and one to maintain first responder certification.

ADA – As noted in the survey, the EPA credentialing process is severely hampered by non-functioning web-based training/reporting/ect. This problem is common to pretty much ALL EPA on-line activities (CPAD, work plan, ect.)

- Paraquat topics, regulation, and education.

ODA - This Spring, ODA sent our biannual Pesticide Bulletin, which included a full-page article on paraquat regulatory changes, to all pesticide licensees.

WSDA - For WA State, in 2021 current paraquat inventory available to growers will almost be all of the product distributed prior to Dec. 2020 deadline for requiring “closed transfer system” on the label.

- Concerns of having adequate “closed transfer systems” available to the user
- Concerns of some users ignoring the “closed transfer system” and bypassing it
- Backpack was a popular method of application. Some users may ignore label prohibition for backpack use.
- TSE developed training in Spanish for NPSEC and trained over 500 applicators in WA in 2020.

ISDA - Idaho has not had any noticeable regulatory violations related to 2019 mandated paraquat training in FY21. Saying that:

- Education seems to be one of the most important issues with using this product. With training requirements needing to continue to be monitored and documented.
- Is concerned about Lock and load systems if the registrant stops taking them back as they did for Temic Lock and Loads, they then wind up coming to state funded pesticide disposals.

ADA - Paraquat is not an issue in AK.

- C&T Plan approval processes.

ODA - Oregon’s C&T plan was reviewed by EPA R10 and was submitted to EPA OPP Certification and Worker Protection Branch for HQ review this past April. Additionally, in May the Oregon legislature passed HB 2031, which contains the statute changes necessary for ODA to comply with the federal certification and training rule. The bill is currently awaiting signature by our Governor.

WSDA - Licensing and Recertification was submitted to EPA OPP Certification and Worker Protection Branch for HQ review.

ISDA - ISDA completed negotiated rulemaking in FY21, and the new C&T changes were incorporated into the proposed rules. Those rules passed both House and Senate Ag Committees and are were later granted temporary status.

- C&T changes were submitted to EPA in the required timeframe in FY21.
- Compliance assistance is expected to be prevalent in early FY22 to accommodate changes.

ADA – EPA’s response time (almost a year to provide feedback on their draft plan) does not match their demanded responses and expectations from states, which are often on a much more restricted timeframe. Requirements are not well defined or conveyed, making extra work (e.g. changing information about what can be policy and what must be in regulation.)

- Pollinators and managed pollinator use of pesticides.

ODA - This Spring, ODA sent out an advisory to applicators, consultants and dealers reminded them to “bee safe” and remind them of Oregon’s 2015 rule prohibiting the use of any product containing the neonicotinoid insecticides dinotefuran, clothianidin, imidacloprid, or thimethoxam, regardless of application method, on linden trees, brasswood trees or other Tilia species.

WSDA - Pollinator Health Bill (SSB5253) passed in WA Legislature – some funding for PMD to work with our Pollinator Health specialist, Plant Services/Apiary Program. Will share more at meeting. No registration issues at this point. I will note that I have attached a draft Appendix A that will be appearing in our new Section 24c and Section 18 guidance document for registrants/applicants. This is

has been a yearlong project to revamp this Appendix A into something more manageable and easier to read. A big thanks to Lenora Jones for developing the layout. We could share with other states—but it is still draft. Your call if you want to share. We got input from Katie Buckley.

- WA State Pollinator Health legislation will address some of this area
- WA State needs an active Apiary Registration and Inspection Program

ISDA - No trends or significant regulatory violations related to pollinators in FY21

ADA - Pollinators are not an issue in AK.

- Hemp and Cannabis topics and issues.

ODA – Oregon continues to have lots of work in compliance on this topic. Investigations can be complicated at times.

WSDA - Washington updated the List of Pesticides for use in the production of Marijuana in March, and is finalizing the Hemp list.

- Regarding the hemp list, there are currently 59 EPA approved pesticides for use on hemp. However—our list contains 359 products (includes those tolerance exempt with “generic” language. Now that Hemp is legal, we normally would not have a “List.” (no other crop has a list.) However, the Hemp Program rules state that we will provide a list. So, for the rest of this year we will maintain the list of the 359 products, but beginning January 1, 2022 we will only provide a list of the EPA approved products. (This should be ample time for registrants to get revised labels approved with EPA and states—it will have been 2 years.)
- Pesticide Management Division is developing a MOU with LCB to help outline the responsibilities of both agencies and to work toward greater collaboration. The document is currently being reviewed by LCB.
- Tim should have Compliance update
- Received report of pesticide residues found on marijuana samples at the beginning of April for 1st quarter 2021. Sent to George Tuttle for analysis. Maybe he can provide some insight or trends that he saw on the report.
- **WSDA has:**
- An active Hemp Program
- An active annual Cannabis Grower Inspection plan
- WSDA Registration Program oversees products registered for hemp and allowed in WA State for use on Cannabis

ISDA - No impact for FY21, but will have impact in FY22 – new legislation allowing production of hemp in the State has passed and was signed by the Governor.

- Still too early to discuss much relevance on this issue other than to learn of the many difficulties from Washington and Oregon.

ADA - More clarity on labels for hemp is needed. Our Div. of Ag was heavily involved in developing a hemp program and this has been hampered by label issues.

- EPA Reregistration review of pesticides, EPA 15 year schedule, PIDs, Final IDs, BEs, BiOps; recent topics such as Pentachlorophenol and other wood treatment product issues, and EPA assessing Pyridines and Pyrimidines herbicides.

ODA – “In 2020 ODA’s Enforcement Program had a very large number of complaints regarding residual clopyralid in compost and manure and it’s impacts to sensitive plants in the Portland, Oregon area. ODA

appreciates EPA adding additional mitigation measures for clopyralid such as requiring pasture and turf applicators to notify the property owners/operators of the compost prohibition, and for the applicator to keep a record of this notification for two year; plus requiring registrants to participate in a stewardship program and provide educational outreach for those affected by herbicide residues in compost."

WSDA - Toxicologist mostly — WSDA provided information to George Tuttle, Toxicologist on Pentachlorophenol, (registration and product information, use sites, etc.)

➤ **WA State appreciates the opportunity to submit comments on the reviews**

ISDA - Depending on final outcome – Penta may become an issue at pesticide collections. Due to the amount that could be potentially brought in to the collections.

ADA - Most of these do not affect AK directly. However, the overall confidence in EPA's review is essential to legally justifying safe use of products.

- Autonomous sprayers and driverless tractors.

ODA, WSDA, ISDA, ADA - On May 17, Region 10 states, EPA Region 10, and California held a virtual meeting to discuss autonomous sprayers and driverless tractors. In this meeting we differentiated between the two main types of technology we've encountered: A completely autonomous sprayer with no driver seat vs. an autonomous tractor pulling equipment (e.g., an airblast sprayer). We also identified the human health, safety, and regulatory concerns we have about this new technology.

ADA - ADA did enact regulation to require monitors on automatic sprayers for outdoor insect control.

- Please list any other issues that you would like to be addressed during this meeting, and forwarded to the full meeting in June.

ODA, ISDA, ADA – None at this time.

WSDA - Just the disposable wipes issue:

Background:

- WA state Engrossed Substitute House Bill 2565 was passed and signed last year with an effective date of 7/1/2022. This bill added a new chapter to 70 RCW Public Health and Safety.
- This law regulates labeling on disposable wipes products so that they include "do not flush" labeling. The law includes wipes that are used for household hard surface cleaning.
- The WA state law includes FIFRA registered products: *NEW SECTION. Sec. 9. For a covered product required to be registered by the United States environmental protection agency under the federal insecticide, fungicide, and rodenticide act (7 U.S.C.23Sec. 136 et seq. (1996), this act applies beginning July 1, 2023.*
- However, under FIFRA Section 24, Authority of States, (b) UNIFORMITY.—Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this Act.
- The Washington state law is in conflict with federal law--we cannot have more restrictive labeling than FIFRA.
- WSDA was not notified of this bill when it went through the legislature last year. It somehow missed all the reviewers, so WSDA didn't have a chance to comment on it.
- We have pesticide registrants asking us how to comply with this WA state law.
- Kelly McLain was told that EPA is considering the same changes to add this "Do Not Flush" requirement to labeling in the future, and was told that it would probably happen before the

7/1/2023 cutoff date for the WA state law. Kelly was also told that other states were enacting the same type of laws.

- Is EPA considering the same labeling changes, and if so—what that timeline looks like?
- Are other states that are considering implementing “Do Not Flush” labeling in their state?
- If it becomes apparent in the next 9 months that there is no movement from EPA—or if the EPA timeline extends beyond the date in our statute, WSDA will need to introduce an amendment in next year’s legislative session to modify our statute to coincide with the EPA date, or verbiage to the effect that the section does not take effect until similar language is adopted at EPA.
 - **Autonomous Sprayers / Driverless Tractors – Pesticide label and/or regulatory guidance, cautions, etc.**
 - **The AAPCO Technology Workgroup could start compiling input from SLAs, industry, etc.**
- Any new Issues that might develop into White Papers or Issue Papers.

ODA, WSDA, ISDA, ADA – None at this time.