



## FEDERAL & STATE PESTICIDE MATTERS – JULY 2018

### PISTACHIOS

Please review the following summary of current federal and state pesticide matters. Should you have any questions or concerns about anything, [contact us](#).

#### CURRENT TOPICS:

#### MAXIMUM RESIDUE LEVEL UPDATE

- MAXIMUM RESIDUE LEVEL UPDATE – JAPAN
  - Japan is proposing an MRL in Chlorothalonil of 0.3ppm in “Other Nuts”; the current MRL for the use of this chemical in “Other Nuts” is 0.1ppm. The U.S. tolerance for the use of this chemical in pistachios is 0.2ppm. For 2016 crop data, the California Department of Pesticide Regulation reported that this chemical was used on 4,895 acres.
  - Japan is proposing to eliminate an MRL for Gibberellin of 0.2ppm in “Other Nuts”. This chemical is registered as exempt in the U.S. when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.
  - Japan is proposing to eliminate a Provisional MRL for Probenazole of 0.03ppm in “Other Nuts”. The U.S. does not maintain a tolerance for the use of this chemical in pistachios.
  - Japan is proposing to eliminate a Provisional MRL for Heptachlor of 0.01ppm in “Other Nuts”. The U.S. does not maintain a tolerance for the use of this chemical in pistachios.
  - Japan is proposing to eliminate a Provisional MRL for Chlorfluazuron of 2.0ppm in “Other Nuts”. The U.S. does not maintain a tolerance for the use of this chemical in pistachios.
  
- MAXIMUM RESIDUE LEVEL UPDATE – EU
  - The EU is proposing to lower the MRL for Buprofezin in Tree Nuts to 0.01ppm. The current MRL for the use of this chemical in pistachios in the EU is 0.05ppm. The U.S. tolerance for the use of this chemical in pistachios is 0.05ppm. For 2016, the California Department of Pesticide Regulation reported that this chemical was used on 21,879 acres. The deadline to submit comments regarding this proposal to USDA is August 29, 2018.
  - The EU is proposing to lower the MRL for Diflubenzuron in Tree Nuts to 0.01ppm. The current MRL for the use of this chemical in pistachios in the EU is 0.05ppm. The U.S. tolerance for the use of this chemical in pistachios is 0.05ppm. There was no data available that indicated use of this chemical in the most recently available crop year data.

## FEDERAL

- **EPA Receives Petition Requesting New Registration of Active Ingredient Sulfoxaflor/Abamectin**
  - In a July 19, 2018, *Federal Register* notice, EPA announced it received applications to register new uses for pesticide products containing currently registered active ingredients, including the insecticide sulfoxaflor on **tree nuts**, group 14-12, at the request of the Interregional Research Project No. 4.
  - Comments must be received on or before **August 20, 2018**.
  - Additional information is available at <http://www.regulations.gov> by entering Docket # EPA-HQ-OPP-2018-0008/FRL-9980-25 in the "Search" box.
  - To view the *Federal Register* notice, please click [here](#).
- **Criticism of FDA's Inaction on Deceptive Labeling Practices for Organics**
  - In an OpEd published in the *Wall Street Journal* on August 5, 2018, Dr. Henry I. Miller, a fellow at Stanford University's Hoover Institution and founding director of the FDA's Office of Biotechnology, criticized the FDA's failure to enforce against potentially deceptive "organic" and "non-GMO" labeling practices common among organic industry products.
  - In his article titled "The Organic Industry is Lying to You," Dr. Miller asserts that while FDA normally issues warning letters and other enforcement actions for deceptive advertising practices, the agency has failed to employ its usual enforcement zeal when it comes to organic products.
- **EPA Issues Information Request on Adverse Effects of 2015 NAAQS Designations (Reminder)**
  - In two June 26, 2018, *Federal Register* notices, EPA announced the soliciting of information to facilitate the Clean Air Scientific Advisory Committee's (CASAC) consideration of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of national ambient air quality standards (NAAQS) for ozone (O<sub>3</sub>) and related photochemical oxidants.
  - The two Calls for Information are likely to provide support for a decision by EPA to decline to adopt the more stringent 70 ppb ozone standard. Critics of the 70 ppb ozone standard have argued that EPA must take costs into consideration when reviewing the standards and that naturally occurring background ozone, such as ozone associated with wildfires and internationally transported ozone, will prevent attainment despite revised state implementation plans required under the new standard.
  - All comments and information submitted in response to these Calls for Information must be received by the EPA by **October 24, 2018**
  - On November 6, 2017, EPA issued designations for some areas of the country. However, EPA's designations were all for "attainment" or "attainment/unclassifiable" areas. While EPA designated 2,646 counties in "attainment" of the more stringent standard, EPA did not declare the remaining counties, about 10 % of the total counties, as nonattainment areas. On February 8, 2018, the D.C. Court of Appeals ordered EPA to submit a report by

May 15, 2018 on the status of the designations for all areas pursuant to the more stringent 70 ppb ozone standard.

- Previously, in an August 10, 2017, EPA withdrew the 1-year extension of the deadline for promulgating initial area designations for the ozone national ambient air quality standards (NAAQS) that were promulgated in October 2015. This withdrawal reinstated the deadline of October 1, 2017, requiring EPA to promulgate the designations for all areas pursuant to the new, more stringent standard.
  - In October 2015, EPA changed the primary health-based NAAQS for ozone from 75 parts per billion (ppb) to 70 ppb based on a determination that the 2008 standard was inadequate to protect human health and welfare. EPA also defended the secondary environment-based NAAQS for ozone, also set at 70 ppb, based on its review of the science on ozone impacts and feedback from the EPA Clean Air Scientific Advisory Committee.
  - Additional information is available at <http://www.regulations.gov> by entering Docket # EPA-HQ-ORD-2018-0274; FRL-9979-56-ORD in the "Search" box.
  - To view the Federal Register notices, please click [here](#) and [here](#).
- **Comment Period on Rules on Increasing Consistency in Cost-Benefit Analysis (Reminder)**
    - In a June 13, 2018, *Federal Register* notice, EPA announced a solicitation of comments on whether and how EPA should promulgate regulations to establish a consistent and transparent interpretation for cost-benefit analysis in environmental regulations.
    - In a July 3, 2018, *Federal Register* notice, EPA announced it was extending the comment period on the regulation.
    - Written comments must be received on or before **August 13, 2018**.
    - EPA promulgates regulations under authority provided in the federal environmental statutes which require or allow some consideration of cost and benefits when setting pollution standards, but there is variation in terminology and specificity provided in each law regarding the nature and scope of the cost and benefit considerations.
    - In this advance notice of proposed rulemaking, EPA is soliciting comment on whether and how EPA should promulgate regulations that provide a consistent and transparent interpretation relating to the consideration of weighing costs and benefits in making regulatory decisions in a manner consistent with applicable authorizing statutes. EPA is also soliciting comment on whether and how these regulations, if promulgated, could also prescribe specific analytic approaches to quantifying the costs and benefits of EPA regulations.
    - Additional information is available at <http://www.regulations.gov> by entering Docket # EPA-HQ-OA-2018-0107; FRL-9979-41-OP in the "Search" box.
    - To view the Federal Register notice, please click [here](#).

## STATE

- **Prophyt (Potassium Phosphite) Section 3 Label Amendment**
  - On July 20, 2018, DPR announced a Section 3 Label Amendment application was received for Prophyt (Potassium Phosphite), a fungicide used for the control of foliar and soil-borne diseases such as root rot, downy mildew, and collar rot, to add a new use on **pistachios**, as requested by Kaken Pharmaceutical Co., LTD.

- **DPR Releases Neonicotinoid Risk Determination**
  - On July 31, 2018, DPR announced that it had completed a risk determination for products containing the neonicotinoid active ingredients, imidacloprid, thiamethoxam, clothianidin, and dinotefuran.
  - On February 27, 2009, DPR placed certain pesticide products containing neonicotinoids with the active ingredient: imidacloprid, thiamethoxam, clothianidin, and dinotefuran into reevaluation. The purpose of the reevaluation process was to provide DPR with a better understanding of the effects of neonicotinoids use on pollinators and provide a credible scientific basis for potential regulatory action to eliminate any significant impact resulting from their use on bee health.
  - Based on DPR's analysis, crop groups considered to present a risk at maximum annual application levels of at least one of the neonicotinoids included in the study include fruiting vegetables, berries, citrus, and **tree nuts**. Among the crop groups for which maximum application levels are considered a low risk are bulb vegetables, leafy vegetables and legumes.
  - As a result of this analysis, DPR will consider mitigation measures for neonicotinoid applications to crops characterized as at risk to reduce residues to levels below the respective standards. Such measures could include modifying application rates or the times at which applications may occur. This mitigation process will likely take two years to complete and will include continued research, consultation with experts, other stakeholders, and the use of technology designed to predict measures necessary to ensure bee colony health.
  - Additional information is available at <https://www.cdpr.ca.gov/docs/registration/reevaluation/chemicals/neonicotinoids.htm>.
  
- **State Water Board Proposes Final Amendments to the Bay-Delta Plan (Reminder)**
  - On July 6, 2018, the State Water Resources Control Board's (State Water Board) issued the State Water Board issued a notice of public meeting to consider adoption of proposed amendments to the Bay-Delta Plan and the supporting proposed final Substitute Environmental Document involving flow objectives for the Lower San Joaquin River and its tributaries, the Stanislaus, Tuolumne, and Merced Rivers, for the reasonable protection of fish and wildlife beneficial uses and revised salinity water quality objectives for the reasonable protection of southern Delta agricultural beneficial uses.
  - The new and revised flow objectives would require increased flows in February through June that can be adaptively implemented under the program to reasonably protect fish and wildlife beneficial uses. The revised salinity water quality objective would increase the existing objectives, which are lower than necessary to reasonable protect agricultural beneficial uses in the southern Delta.
  - The State Water Board has scheduled a hearing to consider adoption of the proposed amendments on **August 21, 2018** at 9:30am.
  - Additional information is available at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/bay\\_delta\\_plan/water\\_quality\\_control\\_planning/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/).

- **State Water Board Comment Period on Central Valley Salt and Nitrate Control Program (Reminder)**
  - On July 6, 2018, the State Water Resources Control Board's (State Water Board) announced it will accept comments on the proposed approval of the Central Valley Regional Water Quality Control Board's amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake Basin to incorporate a Central Valley-wide Salt and Nitrate Control Program.
  - The Basin Plan amendments were adopted by the Central Valley Water Board on May 31, 2018.
  - The Central Valley-wide Salt and Nitrate Management Plan (SNMP) was developed through the Central Valley Salinity Alternatives for Long-Term Sustainability initiative and submitted to the Central Valley Water Board in January 2017. The SNMP provides an overarching framework for managing salt and nitrate in the Central Valley and identified 11 proposed strategies, policies, policy changes or clarifications to the Basin Plans to facilitate the implementation of the SNMP.
  - Comments are due no later than **August 13, 2018**, at 12:00 noon.
  - Additional information is available at [https://www.waterboards.ca.gov/centralvalley/water\\_issues/salinity/#saltnitrate\\_cp\\_bpa](https://www.waterboards.ca.gov/centralvalley/water_issues/salinity/#saltnitrate_cp_bpa).
  
- **CARB Announces Public Comment Period for the Community Air Protection (Reminder)**
  - On June 7, 2018, CARB released a Draft Blueprint and Draft Environmental Analysis and announced it will conduct a public meeting to consider the approval of the Community Air Protection Blueprint (Blueprint).
  - The Draft Blueprint is a proposed project under the California Environmental Quality Act (CEQA). The Blueprint is a statewide strategy and monitoring plan for CARB Board consideration by October 1, 2018. The Draft Blueprint specifically outlines the proposed process for identifying impacted communities, statewide strategies to reduce emissions of criteria air pollutants and toxic air contaminants, as well as proposed criteria for development of community emissions reduction programs and community air monitoring campaigns.
  - Comments on the Draft Blueprint were due by July 23, 2018.
  - The hearing is tentatively scheduled for **September 27, 2018**.
  - Additional information, including the report is available at [https://ww2.arb.ca.gov/our-work/programs/community-air-protection-program-ab-617?utm\\_medium=email&utm\\_source=govdelivery](https://ww2.arb.ca.gov/our-work/programs/community-air-protection-program-ab-617?utm_medium=email&utm_source=govdelivery).