

MARYLAND REGISTER

**Emergency Action on Regulations**

<b>TO BE COMPLETED BY AELR COMMITTEE</b>	<b>EMERGENCY Transmittal Sheet</b>	<b>TO BE COMPLETED BY DSD</b>
Date Received by AELR Committee		Date Filed with Division of State Documents
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Emergency Status Approved		Document Number
_ -Yes _ -No		
Emergency Status Begins On		Date of Publication in MD Register
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Name of AELR Committee Counsel		

**1. COMAR Codification**

**Title Subtitle Chapter Regulation**  
 15 05 01 02

**2. Name of Promulgating Authority**

Department of Agriculture

**3. Name of Regulations Coordinator Telephone Number**  
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Secretary

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**Date**

August 8, 2016

**Title 15**  
**DEPARTMENT OF AGRICULTURE**

**Subtitle 05 PESTICIDE USE CONTROL**

**15.05.01 Use and Sale of Pesticides, Certification of Pesticide Applicators and Pest Control Consultants and Licensing of Pesticide Businesses**

Authority: Agriculture Article, Sections 5-106 and 5-204, Annotated Code of Maryland

**Notice of Emergency Action**

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The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to COMAR 15.05.01.02D to prohibit the use and registration of a pesticide to control plants pests when growing Cannabis, but to allow limited pesticide use for the unrelated purpose of disinfection or sanitation before growth. The Secretary of Agriculture has determined that the application of a pesticide to Cannabis may pose a health risk for human consumption because no pesticides have been registered for this use by the U.S. Environmental Protection Agency and no risk assessment to human health has been performed.

**Emergency status began:**

**Emergency status expires:**

**Comparison to Federal Standards**

There is no corresponding federal standard to this emergency action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

Currently, only 15 medical Cannabis grow facilities licensed by the State Cannabis Commission will be allowed to grow Cannabis. Prohibiting the use of a pesticide on these plants will require growers to incur the cost of applying sound integrated pest management practices to control plant pests. In addition, a person who seeks approval from the Secretary of Agriculture to use a pesticide on marijuana must assume the substantial cost of performing a risk assessment for any pesticide to be approved.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R-)	Unknown
B. On other State agencies:	(R-)	Unknown
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	Unknown
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Unknown

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

- A. The Department of Agriculture will incur unknown staff costs in reviewing a person's petition to approve a pesticide for use on marijuana. There is the possibility of enforcement action on this regulation, but the cost in staff time here is unknown also.
- B. The Department of Health will incur unknown staff costs in reviewing any petition to approve a pesticide.
- D. Marijuana growers will incur unknown costs in applying best management practices to control plant pests. In addition, substantial costs will be incurred if a person applies to the Secretary for the approval of a pesticide for the use on marijuana.
- F. The public will benefit because the application of a pesticide to Cannabis may pose a health risk for human consumption because no pesticides have been registered for this use by the U.S. Environmental Protection Agency and no risk assessment to human health has been performed.

**Economic Impact on Small Businesses**

The emergency action has minimal or no economic impact on small businesses.

**Economic Impact Statement Part C**

- A. Fiscal Year in which regulations will become effective: FY 2016

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:  
Special (Pesticide Fund).

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The U.S. Environmental Protection Agency does not consider Cannabis in its many forms and delivery systems for human consumption when conducting pesticide risk assessments. Therefore, no pesticide products are registered by EPA for use on medical Cannabis, or could be legally used for this purpose under federal law. This regulation is being promulgated as a requirement to exercise the Secretary's authority under Md. Agriculture Code Ann. § 5-204 to adopt rules and regulations governing the use, and disposal of any pesticide, and establish the conditions and appropriate areas for application of any pesticide. Under current law only medical Cannabis grow facilities licensed by DHMH will be allowed to grow Cannabis in the State. It is unclear whether these businesses will be small businesses. By following sound integrated pest management practices, growers should be able to produce their crop without pesticides except as provided in the regulation.

G. Response to small business worksheet:

#### SMALL BUSINESS ANALYSIS WORKSHEET

1a. Intended Beneficiaries.

Unknown.

1b. Intended Beneficiaries: Households.

Unknown.

1c. Intended Beneficiaries: Businesses.

Unknown.

2a. Other Direct or Indirect Impacts: Adverse.  
Unknown.

2b. Other Direct or Indirect Impacts: Positive.  
Unknown.

3. Long-Term Impacts.  
Unknown.

4. Estimates of Economic Impact.

A. Cost of providing goods and services.

Unknown.

B. Effect on the workforce.

Unknown.

C. Effect on the cost of housing.

Unknown.

D. Efficiency in production and marketing.

Unknown.

E. Capital investment, taxation, competition and economic development.

Unknown.

F. Consumer choice.

Unknown.

Attached Document:

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**Title 15**  
**DEPARTMENT OF AGRICULTURE**

**Subtitle 05 Pesticide Use Control**

**15.05.01 Use and Sale of Pesticides, Certification of Pesticide Applicators and Pest Control Consultants, and Licensing of Pesticide Businesses**

**.01 Definitions.**

(text unchanged)

**.02**

A. – C. (text unchanged)

*D. Restrictions on Use of Pesticides for Cannabis Production; Exemptions. Except as provided in this section, a person may not use any pesticide in the production of Cannabis, defined as any part of the plant Cannabis sativa:*

*(1) A person may use a pesticide provided it is registered with EPA and labeled for the following purposes:*

*(a) for the purpose of disinfection or sanitation to control microorganisms on surfaces such as benches, floor, pallets, pots, skids, plant pots, tools and equipment; or*

*(b) for use as a soil fumigant to sterilize planting media to control soil borne organisms.*

*(2) A person may not register any pesticide under § 5-105 of the Agriculture Article, that is labeled for use in the production of Cannabis that does not conform to the requirements of this section.*

*(3) A person may submit a written application to the Secretary to approve the use of a pesticide in the production of Cannabis.*

*(a) the application shall include a certified risk assessment for the pesticide, performed by an independent accredited laboratory approved by the secretary, that concludes that the use of the pesticide in the cultivation of cannabis will not lead to unreasonable adverse effects on human health or the environment, after considering the following uses of the pesticide.*

*(i) On food (in order to have a complete toxicity database to evaluate the potential toxicity of acute, short-term intermediate, and chronic exposure);*

*(ii) On tobacco (in order to have a pyrolysis study to determine the breakdown products formed when the treated plant material is burned);*

*(iii) By the same type(s) of application methods (in order to assess the exposure of workers who mix, load, and apply the pesticides in the cultivation of Cannabis);*

*(iv) On crops with agronomic characteristics similar to Cannabis (in order to adequately protect in the same kind of structure (e.g., greenhouses/shadehouses) or on the same kind of site (e.g., outdoor dryland site) (in order to ensure that workers handling the pesticide are adequately protected when applying the pesticide – for example, ensuring that the adequate personal protective equipment is required – and that the environmental, fate and effects of pesticide use are adequately understood and that any appropriate measures are in place to protect non-target organisms and water resources),*

*(b) In determining whether the pesticide poses an unreasonable risk to human health, the secretary shall consult with the Secretary of Health and Mental Hygiene.*

*(c) The Secretary shall notify the applicant if the request is granted or denied to approve the use of a pesticide in the cultivation of Cannabis.*

JOSEPH BARTENFELDER  
Secretary of Agriculture