

**Maryland General Assembly  
Department of Legislative Services**

**Emergency/Proposed Regulations  
Department of Agriculture  
(DLS Control No. 18-139)**

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## **Overview and Legal and Fiscal Impact**

The regulation implements Section 11 of Chapter 598 of 2018 by authorizing the use of specified pesticides in the cultivation of medical cannabis.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

## **Regulation of COMAR Affected**

### **Department of Agriculture:**

Pesticide Use Control: Use and Sale of Pesticides, Certification of Pesticide Applicators and Pest Control Consultants, and Licensing of Pesticide Businesses: COMAR 15.05.01.02

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## **Legal Analysis**

### **Background**

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) prohibits the sale or distribution in the United States of a pesticide that is not registered or exempted from registration by the U.S. Environmental Protection Agency (EPA). Before registering a pesticide, however, EPA must determine that the pesticide will not generally cause unreasonable adverse effects on human health or the environment. Accordingly, EPA assesses a range of potential health and environmental effects associated with the proposed use of the pesticide during the evaluation of an application. At this time, EPA has not registered any pesticide for use on cannabis, as cannabis is a substance prohibited under federal law.

In the September 16, 2016 issue of the *Maryland Register*, the Department of Agriculture published a proposed regulation regarding the use of pesticides in the cultivation of cannabis and indicated that the application of a pesticide to cannabis may pose a health risk for human consumption. Per request of the committee, the department delayed adoption of the regulation to allow the committee to further review the regulation. The department subsequently adopted the regulation which went into effect on March 27, 2017. The 2017 regulation generally prohibits the use of any pesticide in the cultivation of cannabis, subject to specified exceptions relating to

sanitation, disinfection, and soil fumigation purposes. Among other things, the 2017 regulation also authorizes a person to submit a written application to the Secretary of Agriculture to approve the use of a pesticide in the cultivation of cannabis. The application must include a specified certified risk assessment. On June 2, 2017, the department filed regulations to further allow the use of specified pesticides in the cultivation of cannabis. However, the department subsequently withdrew the regulations.

Section 11 of Chapter 598 of 2018 requires the department, in consultation with the Natalie M. LaPrade Medical Cannabis Commission, to submit emergency regulations, on or before June 1, 2018, that allow the registration and use of specified crop protection agents in the cultivation of medical cannabis. This regulation implements Section 11 of Chapter 598 and repeals and replaces the 2017 regulation.

### **Summary of Regulation**

Similar to existing regulation, the regulation generally prohibits a person from using any pesticide in the cultivation of cannabis, as defined as any part of the plant *Cannabis sativa*, subject to specified exceptions. The regulation retains the current pesticide use exception for sanitation, and disinfection and further allows the use of a pesticide that is labeled for use in a greenhouse environment, if the pesticide:

- is formulated with inert and active ingredients listed in federal regulations regarding minimum risk pesticides;
- is exempt from specified federal food residue tolerance requirements;
- meets specified federal criteria for organic food production; or
- is allowed by EPA by pesticide label language that is broad enough to include use on medical cannabis, as determined by the department.

The regulation allows a spray adjuvant labeled for use on food crops to be used with an insecticide or fungicide if the label otherwise allows such use. The regulation also requires pesticides be registered in accordance with State law and applied in a manner consistent with State and federal application requirements.

The regulation requires the department to annually publish a list of pesticides approved for use in the cultivation of medical Cannabis, and authorizes the Natalie M. LaPrade Medical Cannabis Commission to remove any pesticide from the department's list of approved pesticides if there is reasonable documented evidence that the pesticide has the potential to cause harm to patients using medical Cannabis.

Finally, the regulation authorizes the department to issue a stop-sale order to any registrant of a pesticide that the Secretary finds is in violation of specified State law or that is found by

federal or State authorities to cause unreasonable adverse effects to humans, animals, or the environment.

## **Legal Issues**

The regulation presents no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites §§ 5–105, 5–106, 5–108, and 5–204 of the Agriculture Article and Section 11 of Chapter 598 of 2018 as statutory authority for the regulation. More specifically, § 5–105(a) requires a person who distributes pesticides in the State to register the pesticide with the Secretary. Section 5–106(c) sets forth labeling requirements for pesticides that are distributed, sold, or transported in the State. Section 5–108 authorizes the Secretary to issue and enforce a written stop-sale order to the registrant, owner, custodian, or distributor of any pesticide that the Secretary finds is in violation of the Maryland Pesticide Registration and Labeling Law, or has been found by federal or State authorities to cause unreasonable adverse effects to humans, animals, or the environment, or is in violation of any provision of federal pesticide laws or regulations. Section 5–204 provides the Secretary with broad authority in adopting regulations regarding the storage, sale, distribution, exchange, use, and disposal of pesticides. As discussed above, Section 11 of Chapter 598 requires the department to submit emergency regulations to allow the registration and use of specified crop protection agents in the cultivation of medical cannabis.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

## **Emergency Status**

The department requests emergency status beginning June 5, 2018 and expiring October 5, 2018. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The department indicates the emergency status is necessary to comply with Section 11 of Chapter 598 of 2018.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The regulation implements provisions of Chapter 598 of 2018 (House Bill 2) that require the department to submit specified emergency regulations that allow the registration and use of crop protection agents in the cultivation of medical cannabis as part of an integrated pest

management plan. The department advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs. The fiscal and policy note for House Bill 2 did not indicate that any fiscal impact would result from the adoption of the required regulations, and the regulation should not create any independent fiscal impact.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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