

## MARYLAND REGISTER

# Proposed Action on Regulations

### Comparison to Federal Standards Submission and Response

**Name:** Susan Z Sams  
**Agency:** Department of Agriculture  
**Address:** 50 Harry S Truman Parkway  
**State:** MD  
**Zip:** 21401  
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In accordance with Executive Order 01.01.1996.03 and memo dated July 26, 1996, the attached document is submitted to the Department of Business and Economic Development for review.

The Proposed Action is stricter or more stringent than corresponding federal standards.

**COMAR Codification:** 15.01.05.02

**Corresponding Federal Standard:**

The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA").

**Discussion/Justification:**

The purpose of this action is to place certain restrictions on the use of insecticides containing Chlorpyrifos and seeds that have been treated with Chlorpyrifos in this State. This includes prohibiting the aerial application of such insecticides on the effective date this action and prohibiting other applications of such insecticides and treated seeds after certain other dates. Several agribusiness associations in this State recommend promulgating regulations to phase out the use of these products within a certain period of time - such as the phase-out provisions in the proposed action. In addition, Corteva Agriscience, a principal manufacturer of Chlorpyrifos and one of the registrants in Maryland, recently announced its strategic decision to exit the manufacture and sales business of Chlorpyrifos product.

**TO BE COMPLETED BY DBED**

- Agree
- Disagree

**Comments:**

Name:

Date:

- Submit to Governor's Office

**Governor's Office Response**

**Comments:**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	03/03/2020	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 3/27/2020**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

15 01 05 02

**3. Name of Promulgating Authority**

Department of Agriculture

**4. Name of Regulations Coordinator**

Susan Z Sams

**Telephone Number**

410-841-5829

**Mailing Address**

50 Harry S Truman Parkway

**City State Zip Code**  
Annapolis MD 21401

**Email**

susan.sams@maryland.gov

**5. Name of Person to Call About this Document**  
Robert Hofstetter, Program Manager-Pesticides

**Telephone No.**  
(410) 841-5710

**Email Address**

Robert.Hofstetter@maryland.gov

**6. Check applicable items:**

- New Regulations
  - Amendments to Existing Regulations
    - Date when existing text was downloaded from COMAR online: 3/2/2020.
  - Repeal of Existing Regulations
  - Recodification
  - Incorporation by Reference of Documents Requiring DSD Approval
  - Reproposal of Substantively Different Text:
    - : Md. R
    - (vol.) (issue) (page nos) (date)
- Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

Yes  No

If yes, corresponding proposed text published in:

- same issue
  - future issue
    - previous issue; it appeared in
      - : Md. R
      - (vol.) (issue) (page no's) (date)
- Under Maryland Register docket no.: --E.

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.
- OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

\_ Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Thomas Filbert, General Counsel, (telephone #410-841-5883) on 3/3/2020. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Julianne Oberg

**Title**

Deputy Secretary

**Telephone No.**

410-841-5881

**Date**

3/3/2020

**Title 15  
DEPARTMENT OF AGRICULTURE**

**Subtitle 01**

**15.01.05**

Authority: Agriculture Article, §§2-103, 5-104, 5-105, 5-106, 5-204, 5-207, and 5-210.2, Annotated Code of Maryland; Ch.598, §11, Acts of 2018

**Notice of Proposed Action**

□

The Maryland Department of Agriculture proposes to amend Regulation .02 under COMAR 15.05.01 Use and Sale of Pesticides, Certification of Pesticide Applicators and Pest Control Consultants, and Licensing of Pesticide Businesses.

**Statement of Purpose**

The purpose of this action is to place certain restrictions on the use of insecticides containing Chlorpyrifos and seeds that have been treated with Chlorpyrifos in this State. This includes prohibiting the aerial application of such insecticides on the effective date this action and prohibiting other applications of such insecticides and treated seeds after certain other dates.

**Comparison to Federal Standards**

In compliance with Executive Order 01.01.1996.03, this proposed regulation is more restrictive or stringent than corresponding federal standards as follows:

(1) Regulation citation and manner in which it is more restrictive than the applicable federal standard:

This action places certain restrictions on the use of insecticides containing Chlorpyrifos and seeds that have been treated with Chlorpyrifos in this State which are otherwise allowed under the product label. This includes the phase-out of these products within a certain period of time.

(2) Benefit to the public health, safety or welfare, or the environment:

Restricting the use of insecticides containing Chlorpyrifos will have public health benefits.

(3) Analysis of additional burden or cost on the regulated person:

The proposed action will have both a positive and negative affect on persons who have registered and/or are selling or distributing insecticides containing Chlorpyrifos in Maryland. Such persons may see a loss of revenue from their inability to continue selling insecticides containing Chlorpyrifos in Maryland. However, such persons, if they have alternative products, may see an increase in revenue from the sale of alternative products. Finally, the inability to use insecticides containing Chlorpyrifos may affect a certain segment of agricultural businesses in this State such nurseries, orchards, and Christmas tree farms. The impact can include yield or quality losses due to the lack of adequate alternatives. It can also increase costs. This is because such alternatives, if less effective, may have to be used more often to control these pests. Other agricultural businesses, however, will be minimally impacted. This is because the use of insecticides containing Chlorpyrifos in these businesses have significantly declined (e.g., the use of this insecticide to control for corn root worm has declined with the advent of Bt traited corn which is naturally resistant to corn root worm).

(4) Justification for the need for more restrictive standards:

Several agribusiness associations in this State recommend promulgating regulations to phase out the use of these products within a certain period of time - such as the phase-out provisions in the proposed action. In addition, Corteva Agriscience, a principal manufacturer of Chlorpyrifos and one of the registrants in Maryland, recently announced it's strategic decision to exit the manufacture and sales business of Chlorpyrifos product.

## **Estimate of Economic Impact**

### **I. Summary of Economic Impact.**

The proposed action will have a minimal economic impact on the Maryland Department of Agriculture. It will have both a positive and negative affect on persons who have registered and/or are selling or distributing insecticides containing Chlorpyrifos in Maryland. Such persons may see a loss of revenue from their inability to continue selling insecticides containing Chlorpyrifos in Maryland. However, such persons, if they have alternative products, may see an increase in revenue from the sale of alternative products. Finally, the inability to use insecticides containing Chlorpyrifos may affect a certain segment of agricultural businesses in this State such nurseries, orchards, and Christmas tree farms. The impact can include yield or quality losses due to the lack of adequate alternatives. It can also increase costs. This is because such

alternatives, if less effective, may have to be used more often to control these pests. Other agricultural businesses, however, will be minimally impacted. This is because the use of insecticides containing Chlorpyrifos in these businesses have significantly declined (e.g., the use of this insecticide to control for corn root worm has declined with the advent of Bt traited corn which is naturally resistant to corn root worm).

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	Minimal
()	(R-)	Minimal
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Minimal
()	(-)	Minimal
E. On other industries or trade groups:		
(1) Nurseries, orchards, and Christmas tree farms	(-)	Indeterminable
(2) Other agricultural businesses	(-)	Minimal
F. Direct and indirect effects on public:	(+)	Indeterminable

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

A(). MDA anticipates certain minimal additional expenditures—specifically, minimal costs for providing additional education/assistance to farmers, certified crop advisors, and pesticide applicators related to integrated pest management, including information on safer alternatives to Chlorpyrifos.

A(). As use of products containing Chlorpyrifos are phased out, the Maryland Department of Agriculture (“MDA”) will see a loss of revenue—specifically, a minimal loss in fees it might ordinarily collect from the registration of these products in Maryland.

D(). Persons with registered alternative products to those containing Chlorpyrifos should see an increase in revenue from the sale of alternative products.

D(). Persons who have registered and/or are selling or distributing insecticides containing Chlorpyrifos in Maryland will see a loss of revenue from their inability to continue selling insecticides containing Chlorpyrifos in Maryland. This includes product registrants and persons who hold a dealer’s permit.

E(1). The primary use of insecticides containing Chlorpyrifos in Maryland is agriculturally-related; and, in particular, for nurseries, orchards, and Christmas tree farms to control foliage and soil-borne insect pests. The inability to use insecticides containing Chlorpyrifos may affect such persons negatively. This can include yield or quality losses due to the lack of adequate alternatives. It can also include increased costs because such alternatives, if less effective, may have to be used more often to control these pests. This impact is indeterminable.

E(2). Other agricultural businesses may be minimally impacted. This is because the use of insecticides containing Chlorpyrifos in these businesses has significantly declined (e.g., the use of this insecticide to control for corn root worm has declined with the advent of Bt traited corn which is naturally resistant to corn root worm).

F. It is anticipated that the proposed action will have a positive public health benefit.

### **Economic Impact on Small Businesses**

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

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to Robert Hofstetter, Program Manager, Pesticides , 50 Harry S. Truman Parkway, Annapolis MD 21403, or call (410) 841-5710, or email to Robert.Hofstetter@maryland.gov, or fax to . Comments will be accepted through DATE TO BE DETERMINED. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2020

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 Funds-State Chemist 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 primary use of insecticides containing Chlorpyrifos in Maryland is agriculturally-related; and, in particular, use in the following agricultural operations to control foliage and soil-borne insect pests: nurseries, orchards, and Christmas tree farms. The inability to use insecticides containing Chlorpyrifos may affect such persons negatively. This can include yield or quality losses due to the lack of adequate alternatives. It can also include increased costs because such alternatives, if less effective, may have to be used more often to control these pests. This impact is indeterminate.

Other agricultural businesses, however, will be minimally impacted. This is because the use of insecticides containing Chlorpyrifos in these businesses has significantly declined (e.g., the use of this insecticide to control for corn root worm has declined with the advent of Bt traired corn which is naturally resistant to corn root worm).

G. Small Business Worksheet:

A. Fiscal Year in which regulations will become effective: FY 2020

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 Funds, State Chemist 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.

G. Small Business Worksheet:

1a. Intended Beneficiaries.

Public Health. It is anticipated that the proposed action will have a positive public health benefit.

1b. Intended Beneficiaries: Households.

1c. Intended Beneficiaries: Businesses.

N/A

2a. Other Direct or Indirect Impacts: Adverse.

The primary use of insecticides containing Chlorpyrifos in Maryland is agriculturally-related; and, in particular, use in the following agricultural operations to control foliage and soil-borne insect pests: nurseries, orchards, and Christmas tree farms. The inability to use insecticides containing Chlorpyrifos may affect such persons negatively. This can include yield or quality losses due to the lack of adequate alternatives and/or increased costs because such alternatives, being less effective, may have to be used more often to control these pests. This impact is indeterminate.

Other agricultural businesses, however, will be minimally impacted. This is because the

use of insecticides containing Chlorpyrifos in these businesses has significantly declined (e.g., the use of this insecticide to control for corn root worm has declined with the advent of Bt traited corn which is naturally resistant to corn root worm).

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

It is anticipated that the proposed action will have a positive public health benefit.

**3. Long-Term Impacts.**

To be sold, distributed, or used in Maryland, a pesticide must be registered by both MDA and the U.S. Environmental Protection Agency. Numerous products containing Chlorpyrifos are registered by EPA and MDA. It is expected that any long term impacts will be mitigated by the eventual phasing out use of Chlorpyrifos to safer alternatives.

**4. Estimates of Economic Impact.**

Indeterminate on a certain segment of agricultural businesses. It is expected that, as the use of insecticides containing Chlorpyrifos is phased-out, agricultural businesses such as nurseries, orchards and Christmas tree farms will find/use other safer alternatives.

Other agricultural businesses, however, will be minimally impacted. This is because the use of insecticides containing Chlorpyrifos in these businesses has significantly declined (e.g., the use of this insecticide to control for corn root worm has declined with the advent of Bt traited corn which is naturally resistant to corn root worm).

Attached Document:

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## **Title 15 DEPARTMENT OF AGRICULTURE**

### **Subtitle 05 Pesticide Use Control**

#### **Chapter 01 Use and Sale of Pesticides, Certification of Pesticide Applicators and Pest Control Consultants, and Licensing of Pesticide Businesses**

Agriculture Article, §§2-103, 5-104, 5-105, 5-106, 5-204, 5-207, and 5-210.2, Annotated Code of Maryland; Ch.598, §11, Acts of 2018

**.01 Text Unchanged**

**.02 General Requirements for Applying or Recommending Pesticides.**

A-D Text Unchanged

*E. Restrictions on Use of Insecticides that Contain Chlorpyrifos.*

*(1) Aerial Applications Prohibited. A person may not conduct an aerial application of any insecticide containing Chlorpyrifos in this State.*

*(2) Other Applications Generally Prohibited After December 31, 2020.*

*(a) Except as provided in §E(2)(b) and (c) of this regulation, a person may not apply an insecticide containing Chlorpyrifos or seeds that have been treated with Chlorpyrifos in this State for any use.*

*(b) Fruit Trees and Snap Bean Seeds. Until June 30, 2021, a person may use an insecticide containing Chlorpyrifos or seeds that have been treated with Chlorpyrifos in this State to treat Snap Bean seeds and the trunks and*

*lower limbs of fruit trees. After this date, such applications are prohibited unless authorized by the Secretary under §E(2)(c) of this regulation.*

*(c) Limited Particular Use Authorization. After December 31, 2020, a person may file a written application with the Department, requesting authorization to use an insecticide that contains Chlorpyrifos or seeds that have been treated with Chlorpyrifos for a particular use. If the Secretary has determined that there are no effective alternatives for the particular use noted in the application, the Secretary may authorize such use for a specified period of time which, in no event, may extend beyond December 31, 2021.*

*(3) Establishment of Committee. The Secretary shall establish a committee, with members appointed by the Secretary, to determine alternatives to using Chlorpyrifos or seeds that have been treated with Chlorpyrifos, which shall dissolve on December 31, 2021.*