

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	08/08/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 9/2/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

15 05 01 02

3. Name of Promulgating Authority

Department of Agriculture

4. Name of Regulations Coordinator

Iva Benson

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410-841-5829

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50 Harry S. Truman Parkway, Suite 303

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Annapolis MD 21401

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5. Name of Person to Call About this Document

Dennis Howard

Telephone No.

(410) 841-5710

Email Address

dennis.howard@maryland.gov

6. Check applicable items:

- New Regulations
 - Amendments to Existing Regulations
 - Date when existing text was downloaded from COMAR online: August 8, 2016.
 - 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 Craig A. Nielsen, Assistant Attorney General, (telephone #(410) 841-5883) on August 8, 2016. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Joseph Bartenfelder

Title

Secretary

Date

August 8, 2016

Telephone No.

(410) 841-5884

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 Proposed Action

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The Secretary of Agriculture proposes to amend Regulation .02D 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 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 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. This action also establishes a procedure to be followed by a person who seeks the Secretary's approval for the use of a pesticide on Cannabis.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed 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.

II. Types of Economic Impact.	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 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 Dennis Howard, Program Manager, Pesticide Regulation, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401, or call (410) 841-5710, or email to dennis.howard@maryland.gov, or fax to (410) 841-2765. Comments will be accepted through October 17, 2016. A public hearing has not been scheduled.

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. 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:

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, §§5-106 and 5-204, Annotated Code of Maryland

.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