AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

Americans for Safe Access thanks the Maryland Department of Agriculture for the opportunity to comment on the proposed regulations regarding the use of pesticides for the cultivation of medical cannabis in COMAR 15.05.01. While we can understand that the Department's hesitance for allowing the use of pesticides on medical cannabis, we have substantial concerns regarding the proposed regulations as currently drafted. In terms of actually protecting patients, the draft regulations are one-part overreaction and one-part loophole.

Issue: General ban on use of pesticides

On the one hand, the pesticide ban that is proposed in Maryland goes beyond what a large majority of the states have done for regulation of pesticides in medical cannabis cultivation. The majority of states allow of the use of federal tolerance-exempt active ingredients, subject to a Section 18 emergency exemption under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The use of tolerance-exempt products in other state medical cannabis programs has not resulted in any known adverse events. Moreover, in the minority of states that have imposed a strict ban on pesticide use, there has been no appreciable benefit to patient health as a result. On the contrary, some of these states, such as New Jersey and Delaware, have experienced issues meeting the overall production needs of the patient population.

Additionally, the economic impact assumptions may be overlooking factors that could increase costs to grower. In order to maintain a clean crop indoors, without the use of pesticide products, the cultivator should build numerous small flower rooms, each with it's own clean entry room. This could exponentially increase the cost of construction. However, most folks won't spend the extra money to build out in this way, as was the experience Maine. Most of the commercial cultivation in Maine had only built 1 or 2 flower production rooms. This meant that if the facility suffered a pest outbreak in one of the flower rooms it could devastate anywhere from 1/4 to 1/8 of the company's total annual production. Plus not being able to put medicine on the shelves for 4 months means your doors close and patients are forced back to the illicit marketplace in the meantime. Denying any availability for the safe use exempted pesticides could actually create incentive for growers who suffer a large scale issue to conceal the use of toxic pesticides in order to save the crop out of financial concerns. Allowing for the use of generally safe tolerance-exempt products can help avoid this kind of predicament.

National Office
1624 U St. NW, Suite 200, Washington DC 20009
PHONE: 202.857.4272 **FAX:** 202.857.4273

California Office
770 L St., Suite 950, Sacramento, CA 95814
PHONE: 916.449.3975

General Information
WEB: www.AmericansForSafeAccess.org
TOLLFREE: 888-929-4367

Any additional costs to growers will eventually be passed along to patients, and because medical cannabis is not covered by insurance, these costs can have a profound impact on the day-to-day lives of patients. Whether increased cost comes from more expensive facilities to build and maintain or from crop loss, patients are harmed in a way that could be largely avoided by allowing the use of tolerance exempt products.

Proposed Solution:

When applied to growing crops according to good agricultural practices, the products that conform to a Section 18 emergency exemption under FIFRA, offer effective solutions to producers for pest management. . The products have been granted a tolerance exemption because they do not pose hazard to public health. ASA recommends that states base their rules of the guidance provided by the American Herbal Products Association in its Cannabis Cultivation and Processing Operations Recommendations for Regulators.

> *(b) Pesticides*
> *(1) Pesticides used in cultivation operations must be one of the following:*
> *(i) Subject to a tolerance established for application to cannabis by the US Environmental Protection Agency (EPA);*
> *(ii) Identified by EPA regulation as exempted from tolerance;*
> *(iii) Subject to a Section 18 emergency exemption under FIFRA ; or*
> *(iv) Permitted for application to cannabis in other countries as long as the pesticide is also permitted for application to one or more food crops in the United States.*
> *(2) Cultivation operations must follow the manufacturer's application and storage recommendations, and disposal recommendations for the pesticide product.*
> *(3) Cultivation operations must follow the EPA Worker Protection Standard when preparing and applying pesticides.*
> *(4) Indoor cultivation operations must comply with the pesticide manufacturer's published re-entry interval time periods when applying pesticides.*[1]

The Department may also wish to consider the approach taken by other states, such as California, in allowing the use of certain 40 CFR Part 180 exempted ingredients under certain conditions. For example, the Department could consider implementing spray protocols for these products that allow for the use of certain pesticide products, foliar

[1] AHPA Combined Cannabis Operations Recommendations for Regulators, available at: http://www.ahpa.org/Portals/0/PDFs/Committee/CC/Cannabis_Cultivation_Recommendations_Regulators.pdf?ver=2016-02-23-150854-643. Note, Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to allow an unregistered use of a pesticide for a limited time if EPA determines that an emergency condition exists.

applications, or fumigant, but to limit the use of these products through the second week of flowering. This would enable sufficient breakdown and allow for more effective pest management. We have attached California's guidelines for reference.

Issue: Allowing for the use of toxic products between cultivation cycles

While the proposed regulations go too far in the use of tolerance exempt products during the cultivation cycles, they allow for the use of toxic products during other times. The draft regulations allow for the use of toxic products for the purposes of disinfection or sanitation on surfaces (benches, floors, plant pots, etc) and use as a soil fumigant to sterilize planting media to control soil-borne organisms. The use of these products could potentially present an unnecessary risk to patients.

Proposed Solution:

Again, allowing to the use of tolerance exempt products is the solution that allows growers access to safe and effective products for the purposes of sanitation and sterilization, without posing an unnecessary health risk to patients. The suggested language above from AHPA also applies here.

Issue: Application for use of pesticides on cannabis cultivation

The proposed development of the system to establish tolerance for use of pesticides on cannabis is admirable and can be useful in expanding the range of products available for use in the production of cannabis. Examining the use of pesticides in instances that may be somewhat analogous to medical cannabis use in certain instances (foods for edible cannabis, combusted tobacco for inhaled cannabis, and grown indoors) is admirable, but has limitations. For example, there are currently no consumable agricultural products produced in warehouse conditions utilizing only artificial light, similar to how all cannabis in MD will be required to be grown. Because all other consumable crops are produced either outdoor or in greenhouses, no tolerance studies have been done to explore pesticide breakdown in the absence of sunlight.

Another potential issue would be the use of the third-party laboratories to make the determination. These private labs may also serve as testing labs for the medical cannabis program, which would present a potential conflict of interest if the lab determining safety of pesticide use is also testing for the existence of pesticides going to market.

Proposed Solution:

Testing to establish tolerance thresholds under the proposed protocol would be best if conducted by state-affiliated labs, run by state universities or other state agencies. The state could still require the cultivators to pay for the testing, but testing to establish regulatory standards should be conducted by a state-affiliated laboratory, not licensed cannabis specific laboratories.

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