



## **BEYOND PESTICIDES**

701 E Street, SE ■ Washington DC 20003  
202-543-5450 phone ■ 202-543-4791 fax  
info@beyondpesticides.org ■ www.beyondpesticides.org

January 13, 2016

Don Brown  
Commissioner  
Colorado Department of Agriculture  
305 Interlocken Parkway  
Broomfield, CO 80021

Dear Mr. Brown,

We are writing to you, on behalf of our membership, to oppose the Colorado Department of Agriculture's proposed rule changes to the *Rules and Regulations Pertaining to the Administration and Enforcement of the Pesticide Applicators' Act*. It is our continued position that actions by your agency violate existing laws under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as well as endanger the health and safety of Colorado citizens. Based on FIFRA, the state of Colorado does not have the authority to allow a pesticide use not federally registered by the U.S. Environmental Protection Agency (EPA) unless the pesticide is generally exempt from federal registration, or has been found, after full agency assessment, to comply with exceptions to FIFRA registration. Given these restrictions on Colorado and the EPA under the existing framework for regulating pesticide use, the only pesticides available for use on cannabis in the state of Colorado are those that are those of a character unnecessary for regulation under section 25(b) of FIFRA, and the proposed changes should be amended to reflect this.

### **Establishing FIFRA's 25(b) List as Only Available Pesticides for Use on Marijuana**

CDA's has proposed an amendment to the *Rules and Regulations Pertaining to the Administration and Enforcement of the Pesticide Applicators' Act* (Act) under Part 17.04 (D) that allows for use on marijuana any 25(b) minimum risk pesticide product as long as "the pesticide product label allows use on the intended site of application and allows use on crops or plants intended for human consumption." Beyond Pesticides supports this provision and encourages its adoption as the primary guiding rule necessary for cannabis growers within Colorado.

Given the challenges demonstrated by attempting to reconcile the illegal federal status of marijuana with its legal status in Colorado and other states, and the unique obstacles it creates for thoroughly testing and registering pesticides for use on the crop, the only synthetic pesticides allowed in cannabis cultivation are those that have been deemed of a nature not requiring regulation by EPA under §25(b) of FIFRA. These pesticides are not required to undergo the federal registration process because their ingredients, both active and inert, are

“demonstrably safe for [their] intended use.”<sup>1</sup> Adhering exclusively to the 25(b) list of pesticides both offers growers options for managing pests and provides protections to consumers, absent studies necessary to establish tolerance levels that are safe for humans based on the use of the crop, and we commend your recognition of this in Part 17.04 (D) of the proposed amendments to the Act.

#### **17.04 (A) Broad Label Language Does Not Apply to Use in Cannabis Production**

There are significant shortcomings in Colorado’s current and proposed regulatory schemes that fail to protect the health and safety of Colorado citizens and others purchasing marijuana in the state. These deficiencies center primarily on the allowed use of toxic pesticide products with generalized label language, despite FIFRA guidelines that require all pesticides to be registered for use by EPA based on an evaluation of the full range of potential toxicological effects from inhalation, ingestion, and dermal absorption to users and growers. Adoption of the proposed amendments to Part 17.04 (A) (1-4) would allow the inclusion, according to CDA’s list of approved pesticides, of toxic substances that have never been evaluated for use on marijuana and the resulting exposure pattern that is different and additive to food residue exposure.

#### **17.04 (A) (1) Federal Exemption from Tolerance Is Not a Protective Standard**

**Tolerance exemptions are not based on exposure patterns associated with residues on cannabis.** It does not meet legal standards of FIFRA to allow an exemption from tolerance on crops that have use patterns different from the typical uses of other crops for which the pesticide is registered. In the case of cannabis, the treated crop may be smoked and inhaled, an exposure pattern that is not found among the crops for which EPA has issued a tolerance exemption. Similarly, the treated crop may be used as a salve, with resulting absorption of residues through the skin. Especially in the case of medicinal use by people of differing age groups with varying health conditions, the assumption that the tolerance exemption has been determined for exposure patterns that are different from those assumed in EPA’s analysis is a critical flaw in the science and legal standard of review supporting CDA’s proposal. Additionally, EPA typically, as part of risk assessment, conducts a “risk cup” analysis to determine whether the additive risk from all exposure patterns of the pesticide, including pesticides that have a common mechanism of toxicity, meets its acceptable risk standard. EPA has not conducted such an analysis, which includes exposure from cannabis use, on pesticides products with generalized label language. As a result, the CDA proposals represents a serious potential public health threat to the residents of Colorado.

**Specific exemptions have data gaps.** Among the most concerning of these is the active ingredient Piperonyl Butoxide (PBO), which is a highly toxic substance that causes a range of short- and long-term effects, including cancer and adverse impacts on liver function and the

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<sup>1</sup> EPA About Pesticides. [http://www.epa.gov/oppfead1/cb/csb\\_page/updates/2013/min-risk-pesticides.html](http://www.epa.gov/oppfead1/cb/csb_page/updates/2013/min-risk-pesticides.html)

nervous system.<sup>2</sup> It is commonly used as a synergist in pyrethrin-based pesticide products, many of which can be found on CDA's allowed pesticide list. According to CFR §180.1001(b)(4), while PBO is currently exempt from a tolerance requirement "*when applied to growing crops in accordance with good agricultural practices,*" EPA, based on the results of limited field trials, has recommended the revocation of this tolerance exemption, an action it still plans to take after the assessment of additional residue data.<sup>3</sup> This is just one example of how relying on federal guidance and data, most of which is often incomplete, poses a threat to human health and safety by allowing the use of pesticide products that have not undergone a full evaluation for their use on food crops, let alone the unique routes of exposure cannabis presents.

**Colorado's proposal is out of step with other states that have looked at the science and legal issues of registered pesticide use on cannabis.** Prohibition of the proposed allowed pesticides in other states with similar guidance rules, such as California, further indicates that these chemicals should not be available for use in production within Colorado. New Hampshire and Massachusetts also prohibit the use of these pesticides in their medical marijuana markets, which are focused on protecting medicinal users from the unknown harms of pesticides not registered for use on cannabis. The exclusion from their markets of harmful chemicals like PBO raises concerns with CDA's proposed amendments to the Act.

#### **17.04 (A)(4) – Tobacco Regulation Does Not Apply to the Protection from Pesticide Regulation in Cannabis Production**

In regards to 17.04 (A)(4), which mandates that for allowed pesticides "the active ingredients of the pesticide product are allowed for use on tobacco by the Environmental Protection Agency," the agency should not infer safety from the results of an exposure test performed on tobacco. Data for the registration of pesticides for use on tobacco is not comparative to marijuana for several reasons.

1. An excerpt from a 2003 Government Accountability Office study regarding pesticides on tobacco reveals that "*EPA does not assess intermediate or long-term risks to smokers because of the severity of health effects linked to use of tobacco products themselves.*"<sup>4</sup> That is to say that when evaluating the toxicity of pesticides used on tobacco, EPA intentionally does not assess the potential long-term health effects associated of pesticide exposure because of the known health effects caused by smoking tobacco.
2. This acknowledgement of limited testing practices should raise concerns for CDA, given that marijuana grown within Colorado is often used for medicinal purposes

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<sup>2</sup> Beyond Pesticides. 2006. ChemicalWATCH Factsheet - Piperonyl Butoxide.

<http://www.beyondpesticides.org/pesticides/factsheets/Piperonyl%20Butoxide.pdf>.

<sup>3</sup> EPA Reregistration Eligibility Decision for Piperonyl Butoxide (PBO). EPA 738-R-06-005. June 2006.

<http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2005-0042-0057>

<sup>4</sup> Pesticides on Tobacco, Federal Activities to Assess Risks and Monitor Residues. Government Accountability Office. March 2003. (Accessed January 13, 2016) <http://www.gao.gov/assets/240/237654.pdf>

and has the potential to be consumed by users over long periods of time, making the need for testing the long-term effects of pesticide exposure through marijuana consumption an important factor that cannot possibly be met by substituting results from tobacco testing.

3. Failure to take the shortcomings of tests performed on tobacco into account is reflected in 17.04 (A)(4) and should be removed from the Act altogether.

#### **17.04 (E)- Special Local Need Exemptions**

Section 17.04 (E) would allow the use of *“pesticide products with a Colorado Special Local Need registration, issued under section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act.”* We have stated before that this is a place where EPA is clearly barred, under the language of FIFRA and its own guidance documents, from approving pesticides for such use. Aside from being a significant deviation from the intended purpose and traditional use of a Special Local Need (SLN) exemption, and despite the fact that EPA has put the onus for receiving a SLN exemption on the state, the required review by EPA of any SLN application relating to use of a pesticide on cannabis is barred under current law due to the status of cannabis as a Schedule I drug under federal law. Additionally, EPA’s continuous and explicit refusal to register pesticides for marijuana use would certainly constitute a “previous denial” of use under FIFRA, an act that cannot be present in order to get a SLN exemption approved. Therefore, we urge CDA to abandon any attempts to register pesticides for cannabis use under a SLN exemption and remove this language from the Act.

#### **Recommendation**

In light of our comments, in order to adhere to all existing federal and state law, and establish restrictions that protect the health and safety of the residents of Colorado, the final rule should read as follows:

**17.04. ANY PESTICIDE REGISTERED WITH THE COLORADO DEPARTMENT OF AGRICULTURE MAY BE USED IN ACCORDANCE WITH ITS LABEL OR LABELING DIRECTIONS FOR THE CULTIVATION OF CANNABIS IN THE STATE OF COLORADO UNDER THE FOLLOWING CONDITIONS:**

**(A) THE FEDERAL PESTICIDE PRODUCT LABEL SPECIFICALLY ALLOWS USE ON CANNABIS, OR**

**(B) FOR 25(B) MINIMUM RISK PESTICIDE PRODUCTS AS DEFINED IN 40 CFR 152.25(F); THE PESTICIDE PRODUCT LABEL ALLOWS USE ON THE INTENDED SITE OF APPLICATION AND ALLOWS USE ON CROPS OR PLANTS INTENDED FOR HUMAN CONSUMPTION.**

**17.05. THE COMMISSIONER MAY PROHIBIT THE USE OF ANY PESTICIDE PRODUCT FOR THE CULTIVATION OF CANNABIS IF HE DETERMINES THAT SUCH USE POSES A SIGNIFICANT THREAT TO PUBLIC HEALTH AND SAFETY OR THE ENVIRONMENT, OR FOR WHICH DATA IS**

**NOT AVAILABLE TO DETERMINE FULLY THE HAZARD THAT THE EXPOSURE TO RESIDUES PRESENTS TO THE MEDICAL AND RECREATIONAL USER.**

Establishing this as the prevailing guidance within the state of Colorado is the only way to ensure public health and safety by protecting consumers from any and all unknown harms associated with the use of pesticides on marijuana. As it stands, the current list of allowed pesticides published by CDA violates FIFRA and should be revoked immediately and replaced by products that unequivocally satisfy the guidance recommended above.

As always, we appreciate your immediate attention to these issues and look forward to hearing your response.

Sincerely,

A handwritten signature in black ink that reads "Annie D'Amato". The signature is written in a cursive, flowing style.

Annie D'Amato, J.D.  
Legal and Policy Associate

cc: Mitch Yergert, John Scott