

Region 9

Nevada SFIREG Issue Paper

Overview of the Issue

Cannabis cultivation and consumption has been legalized in a number of states beginning in 2000 and 2001. Cultivation of cannabis requires management of Insect and disease problems, and cultivation facilities need pesticide products to manage these pests. Although EPA has approved a few products for the cultivation of industrial hemp, this is only a small part of the now legal cannabis growing industry. FIFRA 25b products are available but have limitations, especially when pest populations become unmanageable. Cultivators have had to turn to any and all general use pesticide product which raises questions about safety to handlers and consumers because of this void. Failure of EPA to fulfill its responsibility and the agency's inaction to address this problem 16 years later has forced state agencies to develop their own risk assessment tools which have questionable value. There is a substantial need to make registered pesticide products available that meet EPA safety standards. States have few resources to make this determination and EPA has the obligation to assure that pesticide products applied in the cultivation of plants for food and fiber are safe to consume and use.

In a letter written to the Colorado Department of Agriculture from EPA's Office of Pesticide Program, dated May 19, 2015, EPA "strongly" encouraged states to pursue SLN authorizations, where a federally registered pesticide is approved for use(s) similar to the manner in which the SLN pesticide would be used. Using the guidance established in this letter, states submitted 24c packets.

On June 22, 2017, U.S. EPA disapproved the 24c applications, not on the basis of guidelines established in the May 19, 2015, letter, but on a questionable interpretation rendered, stating that a similar use pattern does not exist because of the general illegality of cannabis cultivation. A similar use pattern does exist for registered uses of pesticide in the cultivation of industrial hemp (of which there are registered pesticide products). Also, instead of denying on the basis of guidance established in the May 19, 2015, letter, the applications were denied on the basis of the "intent of Congress". It could be argued that the intent of Congress was to make it EPA's primary responsibility, to insure the safety of any and all pesticides used on food and fiber for the protection of human health and the environment.

Since the statute, regulation and guidance related to FIFRA 24c registrations have not changed between May 19, 2015, and June 22, 2017, clarification of this reversal was requested during a consultation with U.S. EPA on June 29, 2017. The explanation given for the reversal during this consultation an "administrative change". If there was no change in the statute, regulation or guidance, then the denial was not done on a legal basis.

Recommended Action:

Congress has given the EPA the authority and the responsibility, through several federal laws, including the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to regulate the registration and use of pesticides in the United States. Through the registration process and regulating pesticide use the EPA performs it's mission to protect human health and the environment. EPA can no longer ignore it's responsibility for regulating pesticide applied during the production of cannabis.

EPA should reverse it's latest decision on the issuance of FIFRA 24c registrations for cannabis. If the agency will or cannot do this, it must offer states alternatives to work with EPA to pursue these registrations immediately, especially now, to address the now legal widespread cultivation of recreational cannabis, which exponentially expands the number of cannabis acres.