



Department of Pesticide Regulation



Brian R. Leahy
Director

Edmund G. Brown Jr.
Governor

January 25, 2017

ENF 17-03

TO: County Agricultural Commissioners

SUBJECT: PRELIMINARY GUIDANCE ON COUNTY PESTICIDE ENFORCEMENT
RELATED TO COMMERCIAL CANNABIS CULTIVATION AND
CANNABIS DEFINED AS AN AGRICULTURAL COMMODITY

In response to the recent passage of the Medical Cannabis Regulation and Safety Act (MCRSA) and the recreational cannabis ballot initiative, the Adult Use of Marijuana Act (Proposition 64), the Department of Pesticide Regulation (DPR) has received multiple inquiries from county-level officials about pesticide enforcement. This letter is intended to provide an update on DPR's position with respect to county-pesticide enforcement related to cannabis cultivation, and clarification regarding the classification of cannabis as an agricultural commodity. For purposes of this letter, "cannabis" refers only to cannabis that is cultivated for commercial purposes covered by the requirements of MCRSA or Proposition 64.

MCRSA and Proposition 64 regulate the commercial dispensing of cannabis by establishing "seed to sale" licensing programs for medical and recreational cannabis that will be implemented beginning in 2018. Under these laws, cannabis cultivators will be licensed by the California Department of Food and Agriculture (CDFA) and subject to robust regulatory requirements, including operating procedures such as security protocols. But until that time, the cannabis industry remains largely unregulated. Due to staff safety concerns, DPR continues to urge the County Agricultural Commissioners (CAC) to exercise their judgement based upon the specific situation in their county as to whether to provide compliance advice, inspect, or otherwise enforce pesticide use violations against cannabis growers.

Under MCRSA and Proposition 64, CDFA will have authority to include pesticide requirements as a component of cultivation licenses. However, irrespective of any cultivation license requirements, cannabis cultivators will be subject to Divisions 6 and 7 of the Food and Agricultural Code (FAC) and its implementing regulations. In addition to inspections conducted under their pesticide use enforcement programs, CAC's may enter into cooperative agreements with CDFA as provided under MCRSA to inspect licensed-cultivation sites (Bus. & Prof. Code, § 11362.775, subd. (d)(3)). These inspections would be conducted in order to enforce license conditions, and could also lead to the discovery of FAC violations. Once CDFA finalizes the cultivation license requirements, DPR will likely provide additional guidance for CAC's on conducting pesticide use inspections at licensed-cultivation sites. In the interim, we are providing the following preliminary guidance.



Cannabis is a Schedule I Controlled Substance under federal law and, as U.S. EPA controls pesticide labeling, there are no pesticide products registered specifically for use on cannabis¹. A primary objective for U.S. EPA restricting pesticide use to certain sites listed on the label is to protect human health by assuring there will not be unsafe pesticide residue levels. In recognition of the absence of this regulatory tool, under MCRSA and Proposition 64, unsafe pesticide residue levels will be enforced through rigorous laboratory testing of processed cannabis. Under these testing programs, the Bureau of Medical Cannabis Regulation/Bureau of Marijuana Control (Bureau) will license testing laboratories, establish pesticide levels that are safe for human health, and require testing of the cannabis prior to sale. In establishing these levels, the Bureau shall consider DPR guidelines for pesticide residue in processed cannabis products for final consumption (Bus. & Prof. Code, §§ 19344, subd. (a)(2); 26101, subd. (a)(2)). **For this reason, DPR urges discretion in enforcing use site restrictions for pesticides that do not fall into the categories listed below, but that you do enforce all other label requirements referenced below.**

The attached DPR handout instructs the CAC's not to issue restricted materials permits for cannabis cultivation sites. DPR expects the CAC's to conduct inspections to enforce: the worker health and safety requirements found in 3 CCR 6700, et seq.; the prohibition against the use of an unregistered pesticide; the use of federally restricted use pesticides by an unlicensed individual; and the following pesticide-label requirements:

- PPE requirements
- Application method must be on the label
- Application rate cannot exceed that specified for method used
- Environmental hazards
- The longest restricted entry interval required by the label
- Greenhouse and indoor-specific-use directions

While DPR urges discretion in enforcing use site restrictions generally, it will request strict enforcement of all label requirements including site restrictions for the use of any of the following types of pesticides:

- Materials on the Groundwater Protection List
- Products that do not have any food uses
- Materials identified as having a high acute toxicity. These materials are all pesticide products labeled with the signal word "DANGER," and those pesticide products labeled with the signal word "WARNING" that have a median lethal dose (LD50) of <100 mg/kg/day.

¹ Under section 24(c) of the Federal Insecticide Fungicide and Rodenticide Act, states may register pesticide products for additional uses where a special local need exists. DPR expects to receive 24(c) applications to register pesticide products for use on cannabis. U.S. EPA has indicated that it would consider a 24(c) registration for cannabis if the application meets certain specified conditions.

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This inspection guidance is preliminary and more definitive guidance will be provided after CDFA finalizes the cultivation licensing program. You may have seen DPR's guidance to cannabis cultivators on legal pesticide use. That guidance was developed prior to the passage of MCRSA and Proposition 64 and was not intended to provide guidance to the CAC's about pesticide use enforcement related to legal cannabis cultivation under state law.

Lastly, DPR has determined that cannabis meets the definition of an "agricultural commodity" in 3 CCR § 6000, and therefore, any requirement placed on pesticide use on for the production of an agricultural commodity in Divisions 6 and 7 of the Food and Agricultural Code and its implementing regulations, applies to cannabis. One significant impact of this determination is that cannabis growers will be subject to pesticide use reporting requirements under 3 CCR § 6626—as opposed to 3 CCR § 6627. An updated handout to reflect this requirement is attached.

If you have any questions, please contact the Enforcement Branch Liaison assigned to your county.

Sincerely,

Original Signature by:

Donna Marciano
Chief, Enforcement Branch
916-324-4100

Attachment

cc: Mr. Joe Marade, DPR Agricultural Commissioner Liaison
Enforcement Branch Liaison