

MONTEREY COUNTY

AGRICULTURAL COMMISSIONER/SEALER OF WEIGHTS & MEASURES
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TO: Nick Chiulos, Assistant County Administrative Officer
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FROM: Henry Gonzales, Agricultural Commissioner/Sealer of Weights and Measures ^{DS} HSG

DATE: August 18, 2021

SUBJECT: Board Referral – Review of Cannabis Program Organizational Structure

The Agricultural Commissioner/Sealer of Weights and Measures Office (ACO) does not process county cannabis permits including review and approval of any of the permitting requirements. The Cannabis Program (Program) ordinance does not confer new authority to the ACO. All the authorities of the ACO relating to cannabis production are preexisting in the California Business and Professions Code (BPC), the California Food and Agricultural Code (FAC) and the California Code of Regulations (CCR).

Since the inception of the Program, the ACO has collaborated and worked with the Program. We have worked cooperatively with the Program and whenever there have been questions or a need for information, we have provided answers in a timely manner. We have also joined in group inspections when those inspection met the ACO’s operational goals.

The ACO has not and cannot relinquish ACO authority mandated or authorized by the BPC, FAC and the CCR to enforce the many provisions that fall under the purview of the ACO. This includes supervision of agricultural inspectors and other licensed staff. Consequently, the ACO staff cannot serve under and/or be directed by another County Department as follows:

The County Agricultural Commissioner’s office has been regulating the agricultural industry since 1881. FAC sections 2001 and 2002 states, respectively “there is in each county government the county department of agriculture” and “the county department of agriculture is under the control of the county agricultural commissioner.” The following are some of the major agricultural programs administered by the ACO on an annual basis:

- Administers state examinations to certify county growers as pesticide applicators.
- Issues over 500 hundred pesticide use permits.
- Registers all farm labor contractors.
- Registers weigh master locations, including weighing and measuring devices and instruments.
- Register hemp growers.

Additionally, FAC 2126 states that “the commissioner may appoint deputy commissioners, inspectors and clerks who shall serve at his pleasure. Such inspectors may be designated as county agricultural inspector or county agricultural biologists.” California law also requires all county employees working in the capacity of Agricultural Inspector/Biologists and/or Weights and Measures inspectors to possess licenses demonstrating job

proficiency in areas of Pesticide Regulation, Investigation and Environmental Monitoring, Integrated Pest Management, Commodity Regulation, Pest Prevention, Weight Verification, Measurement Verification and Transaction and Product Verification. FAC section 2101 states “(a) The director shall examine persons who desire to become commissioners or deputy commissioners...Successful candidates shall be given a license which shall be valid for five years unless revoked...”

Agricultural inspectors must be highly educated, state licensed, trained and experienced to perform inspections of cannabis and all other crops, this is specifically stated under FAC 2106: “No person shall be eligible for the examination or shall be given or issued a license pursuant to Section 2101, 2102, or 2103 unless he or she possesses a bachelor's degree from an accredited four-year college with specialization in one or more appropriate disciplines in the agricultural, biological, chemical, or physical sciences, or other appropriate disciplines, as determined by the secretary...”

Deputy Agricultural Commissioners/Sealers of Weights and Measures are the supervisors of agricultural/weights and measures inspectors and must possess a state license as a Deputy Agricultural Commissioner/Sealer of Weights and Measures in order to perform their supervision duties. Planning, organizing, directing, assigning, training and evaluating staff are among the duties of the supervising deputy agricultural commissioner/sealer of weights and measures. Therefore, the ACO meets the state's educational requirement, possesses the required state licenses, has the necessary and appropriate training, experience, expertise, and state authority, to implement and supervise plant protection, pesticide use, and weights and measures enforcement activities.

Furthermore, CCR section 6100(a)(7) “Purpose” states the following: “for the purpose of this article, any county agricultural commissioner shall be considered a state agency. Under authority of the Food and Agricultural Code, each commissioner shall administer the local enforcement of pesticide regulatory program under the supervision of the director. CCR section 6140 (a) and (b) provides inspection authority to the agricultural commissioner which states “(a) The director or commissioner may, during business hours, or if necessary to ensure immediate compliance, at any other reasonable time enter and inspect, and/or sample any of the following or related items in order to determine compliance with the provisions of this chapter and Divisions 6 and 7 of the Food and Agricultural Code, which pertain to pesticides and pest control operations...” and “(b) Each person responsible, pursuant to the provisions of this Chapter and Division 5 and 7 of the Food and Agricultural Code which pertain to pesticides and pest control operations, for preparing and maintaining records, shall make those records available to the director or commissioner during business hours upon demand of the director or commissioner...”

Similarly, FAC section 5101 states “Each commissioner is an enforcing officer of all laws and regulations which relate to the prevention of the introduction into, or the spread within, the state of pests. He is, as to such activities, under the supervision of the director” and FAC section 11501.5 says that “The director, and the commissioner of each county under the direction and supervision of the director, shall enforce this division and the regulations which are issued pursuant to it.”

Likewise, FAC 12200 states, “There is in each county the office of county sealer of weights and measures... A county sealer may, with the consent of the power appointing him, appoint deputies or inspector when necessary or expedient to carry out the duties of his office. Such deputies or inspectors shall serve at the pleasure of the county sealer...” The enforcement of California weights and measures laws and regulations is the responsibility of the Division of Measurement Standards (DMS) which in turns, works closely with county sealers of weights and measures who, under the supervision and direction of the Secretary of Food and Agriculture, carry out the

vast majority of weights and measures enforcement activities at the local level. Ensuring fair competition for industry and accurate value comparison for consumers are the primary functions of the county/state programs.

For this reason, the ACO has jurisdiction for both unincorporated areas of the County and within city limits as it pertains to Weights and Measures enforcement, plant protection, and pesticide related activities. For instance, the ACO has issued the following number of operator identification numbers (IDs) and/or restricted material permits in order for cannabis businesses to purchase and use pesticides as part of their operation and are as follows:

- In 2018: 75 Operator IDs/permits were issued.
- In 2019: 91 Operator IDs/Permits were issued.
- In 2020: 79 Operator IDs/Permits were issued.
- In 2021: 81 Operator IDs/Permits have been issued.

The ACO has also carried out the following regulatory/safety inspections on cannabis businesses as follow:

- In 2018, 18 field safety employee inspections were conducted as well as 42 audit/records inspections with 15 follow-up inspections.
- In 2019, 16 audit/records inspections were conducted with 4 follow-up inspections.
- In 2020, 2 audit/records inspections were conducted with no follow-up inspections and
- In 2021 (to date), 17 audit/records inspections have been conducted with 11 follow-up inspections.

And the ACO has conducted the following educational/outreach meetings with the cannabis industry:

- On September 20, 2018 the ACO provided a Cannabis Cultivation Workshop to cannabis businesses and
- On September 27, 2018 the ACO conducted a subsequent cannabis grower outreach to the cannabis industry.

In addition to the above workshops, the ACO frequently receives questions from cannabis businesses about pesticide label interpretations to determine what products are legally approved or authorized to use as well as other pesticide safety regulatory questions.

Over the years, the ACO has also conducted the following weights and measures work as it pertains to the cannabis industry and based on the authority stated in FAC 12213, "Each sealer may, in the general performance of his duty, without formal warrant, enter or go into or upon, any stand, place, building or premises or stop any vendor, peddler... containing commodities for sale or delivery and, if necessary, require him to proceed with the commodity to some place which the sealer may specify for the purpose of making the proper tests."

- In 2018: the ACO inspected 150 weighing devices out of which only 121 were certified.
- In 2019: the ACO inspected 213 weighing devices out of which only 189 were certified.
- In 2020: the ACO inspected 397 weighing devices out of which only 354 were certified and
- In 2021: the ACO have inspected 315 weighing devices out of which only 303 have been certified.

Since the beginning of the Program (2018-2019) most non-compliances that were found were "incorrect weighing devices." This was corrected with outreach from the ACO weights and measures staff to the cannabis businesses. The ACO weights and measures staff learned that most cannabis businesses preferred to purchase their weighing devices online as opposed to buying it from a registered service agent (RSA), thus the high

number of 'out of order' weighing devices. Although it is not a requirement to hire an RSA, the ACO staff has advised businesses to contact an RSA to ensure their devices are consistently correct. The ACO weights and measures staff has also been conducting weighmaster outreach by contacting cannabis businesses and explaining the weighmaster requirements.

Equally important, the ACO conducts compliance inspections for and takes appropriate corrective and penalty action of the following:

- Weigh master locations, licenses, devices and instruments used to weigh or measure a commodity
- Pesticide use applications
- Pesticide company business records
- Field worker safety
- Nurseries for pests/diseases and plant health
- Incoming and outgoing shipments of plants and plant products for exotic invasive pests and diseases
- Conduct exotic invasive pest and disease surveillance and detection using surveys and traps
- Conduct exotic invasive pest and disease management activities to contain populations to a minimum
- Conduct exotic invasive pest and disease eradication activities to rid the county of those populations
- Agriculture seed quality, viability, and labeling.

To this end, group inspections to the same cannabis entity are not efficient, productive and or provide good customer service to those businesses. Cannabis business operators can only help one compliance officer at a time and as such, other participating departments must wait for the operator/staff to become available. It is the waiting time for a cannabis business staff-member that makes group inspections inefficient. In group inspections there can be 5-7 different county departments with each department sending 1 or 2 staff members. Most cannabis businesses have 1 or 2 of their representatives available to serve all the county departments during a visit.

Another issue with group inspections is when county inspectors from one department observe an inspector from another department conduct an inspection. A problem arises at a later date, when that observant inspector notes a presumed violation of the other County department and makes the assumption and assertion of a violation without training, experience, or authority to make that determination. The assertion that a violation has occurred, when it has not, undermines the confidence of the cannabis business in the Program.

Therefore, the ACO has been provided with the responsibility and authority to administer at the county level the implementation and enforcement of state plant protection, pesticide use, as well as weights and measures laws/regulations, The ACO is not able to delegate such legal responsibilities to direct, supervise, and provide direction to the ACO staff from another County department or manager. The ACO has been allocated 2.5 agricultural and weights and measures inspector positions paid from the county cannabis fund and has over 35 staff conducting cannabis inspector regulatory work according to the number of hours the 2.5 positions provide. As mentioned above, the ACO has been working with the cannabis industry on educating cannabis businesses on plant protection, pesticide use, weights and measures laws/regulations as well as working with the Program since the beginning of its inception. The number of inspections performed, and permits issued are examples of the work the ACO has accomplished during this period. The ACO also collaborates and participates in meetings with the Program and has participated on inspections with other sister county agencies when they are scheduled. The ACO will continue to collaborate with the Program as it has been doing since day one.

