

White Paper on Medical Marijuana

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1. ISSUE

The current issue facing California County Agricultural Commissioners/Sealers with respect to medical marijuana is the statewide uniform interpretation of California Business and Professions Code Sections 12210(a), 12210(b) and 12500(e).

§12210 (a) Each sealer shall, within his or her county inspect, try and test all weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measurements, and tools, appliances and accessories connected with any or all such instruments or measures, sold, or used by any proprietor, agent, lessee or employee for commercial purposes, as defined in subdivision (e) of Section 12500.

§12210 (b) Each sealer shall, when so directed by the board of supervisors of his or her county, and only upon the written request of any person, firm or corporation, calibrate, test, weigh, and measure, and certify to the accuracy of, noncommercial weights and measures and weighing and measuring devices, and instruments, tools, and accessories connected therewith. The board of supervisors may authorize the sealer to establish from time to time a schedule of fees to cover the cost of such service and to charge and collect the fees.

§12500(e) "Commercial purposes" include the determination of the weight, measure, or count of any commodity or thing which is sold on the basis of weight, measure, or count; or the determination of the weight, measure, or count of any commodity or thing upon which determination of a charge for service is based. Devices used in a determination upon which a charge for service is based include, but are not limited to, taximeters, odometers, timing devices, parcel scales, shipping scales, and scales used in the payment of agricultural workers.

A recent survey was sent to all fifty eight county sealers requesting their current policies with respect to inspecting and testing scales used for medical marijuana transactions. Forty nine counties responded to the survey with the results listed below:

- 5 counties register/test medical marijuana scales (commercially) pursuant to §12210(a)
- 8 additional counties would register/test medical marijuana scales (commercially) pursuant to §12210(a) if requested by device owners/users.
- 2 counties test medical marijuana scales (non-commercially) pursuant to §12210(b)
- 8 counties would test medical marijuana scales(non-commercially) pursuant to §12210(b) if requested by device owners/users
- The remaining counties do not register/test medical marijuana scales commercially or non-commercially

- Some counties acknowledged they may already be registering/testing scales without knowing the intended use (e.g. scales are brought to county sealer testing locations without disclosing what the intended commercial use of the scale).

2. ADDITIONAL ISSUES

A. Weights & Measures

a) Pre-packaged commodities

State laws and regulations mandate requirements for labeling and quantity determinations for pre-packaged commodities sold at retail. Medicinal marijuana that is already packaged and is not weighed at the time of purchase may need to comply with all applicable requirements for package labeling (identity, responsibility and quantity).

b) Weighmaster

Medicinal marijuana sales may also be subject to California weighmaster license requirements. Dependent upon the type and method of transactions, California Business and Professions Code Sections 12700 and 12711 may apply.

§12700. A weighmaster is any person who, for hire or otherwise, weighs, measures, or counts any commodity and issues a statement or memorandum of the weight, measure, or count which is used as the basis for either the purchase or sale of that commodity or charge for service.

§12711. A weighmaster shall issue a weighmaster certificate whenever payment for the commodity or service represented is dependent on a written or printed weight, measure, or count.

c) DOT drug testing program

Some counties employ weights & measures inspectors who work in several overlapping programs and some of the programs require a California commercial driver's license. Persons maintaining commercial licenses are subject to random drug testing requirements. County employees who maintain commercial licenses and perform inspections in medical marijuana establishments may be subject to possible exposure (second hand smoke and dermal) that may result in a positive random drug test.

B. Agriculture

a) Pesticides

It has been reported that medical marijuana growers are using unregistered and illegal insecticides and miticides to perform pest control for their crop. Mendocino County has had problems with outdoor growers using massive quantities of rodenticides to protect their crops

from rodents. This practice is not only illegal, it is causing secondary poisoning to non target species and damaging the environment.

Pesticide use on marijuana may also result in illegal and unsafe pesticide residues in the final product that is consumed by the end user. Medical marijuana patients could be subjecting themselves to illness and/or injury as there are no residue tolerances for any pesticide used on marijuana.

b) Organic registration

Some marijuana growers are seeking registered organic status in California. Current state opinion disallows this action.

c) Nursery stock cleanliness

There are no current requirements for medical marijuana sales. If marijuana plants are allowed to be sold commercially, existing state laws and regulations may dictate the standards for allowing the plant sales.

d) Seed labeling

There are also no current requirements for medical marijuana sales. If marijuana seeds are allowed to be sold commercially, existing state laws and regulations may dictate the standards for allowing seed sales.

3. Conclusion

Absent an Attorney General opinion on the matter of Business and Professions Code Sections 12210 (a), 12210 (b) and 12500 (e), California County Agricultural Commissioners and Sealers are required to individually interpret federal, state and county laws concerning medical marijuana commercial transactions. This process allows local political and philosophical preferences to dictate the manner in which a local jurisdiction chooses to address medicinal marijuana “commercial” transactions.

In light of the current methodology cities and counties are implementing the requirements of Proposition 215, local political opinions will continue to dictate the commercial classification of medical marijuana scales.

Pending the legal status of medical marijuana the additional issues discussed in this paper may also warrant attention.