

# **INDUSTRIAL HEMP REGULATORY OVERVIEW – SLO County Bar Association**



**DEPARTMENT OF AGRICULTURE/  
WEIGHTS AND MEASURES**

**Marc Lea, Assistant Agricultural Commissioner  
March 18, 2021**

# Industrial Hemp Legal Definition

- Industrial Hemp is defined in both California & Federal law
- California Food & Agricultural Code (81000):

"Industrial hemp" or "Hemp" means an agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa* L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.

- Industrial Hemp is also defined in the California Health & Safety Code (11018.5):

(a) "Industrial hemp" means a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.

(b) Industrial hemp shall not be subject to the provisions of this division or of Division 10 (commencing with Section 26000) of the Business and Professions Code, but instead shall be regulated by the Department of Food and Agriculture in accordance with the provisions of Division 24 (commencing with Section 81000) of the Food and Agricultural Code, inclusive.



# Industrial Hemp Biology





# Industrial Hemp Biology



# Industrial Hemp – Registration Requirements

- Registration application and fee must be submitted to county agriculture department, who reviews and approves the application
- Requirements continue to evolve but are relatively simple compared to cannabis cultivation:
  - Criminal history report for grower and business partners
  - Approved hemp cultivar
  - Signage required



# Industrial Hemp – Sampling & Testing Requirements

- Official samples must be taken by 3<sup>rd</sup> party following regulatory protocol
- THC levels are then tested by a certified lab
- If THC levels are in compliance, grower has 15 – 30 days to harvest
- If THC levels exceed legal threshold, crop can be re-sampled one additional time
- If crop does not meet 0.3% THC legal requirement, it must be destroyed





# Industrial Hemp – Sampling & Testing Requirements



# Cannabis & Industrial Hemp – Requirements in San Luis Obispo County

- Cannabis permanent ordinance passed by the Board of Supervisors in November 2017
- Industrial hemp was specifically excluded from the cannabis ordinance and added to the “crop production and grazing” definition
- With the passage of the 2018 Federal Farm Bill, industrial hemp is removed from the Controlled Substances Act list
- Industrial hemp can now be grown legally if in accordance with State program and Federal law
- California began accepting industrial hemp commercial cultivation applications in April 2019





# Cannabis & Industrial Hemp – Requirements in San Luis Obispo County

- In June 2019, an urgency ordinance restricting hemp cultivation was passed by the San Luis Obispo County Board of Supervisors
- That urgency ordinance was largely in response to concerns of odor and potential conflicts with existing vineyards and wineries
- In May 2020, a permanent industrial hemp ordinance was enacted, taking effect in June 2020
- The permanent ordinance contains numerous restrictions in land use ordinance that make it difficult to qualify, especially for outdoor cultivation
- Hemp cultivation registrations have dropped to just a handful of growers




# San Luis Obispo County – Industrial Hemp Ordinance

- Restrictions on outdoor cultivation:
  - Parcels must be zoned Agriculture or Rural Lands
  - Cultivation sites must be 400 acres or greater
  - Cultivation area must be setback 2,000 feet from adjacent property lines and 1 mile from an URL/VRL
- Cultivation is prohibited in the Edna Valley AVA
- Rules for indoor hemp cultivation are much less restrictive
- Cultivation sites over the Paso Robles groundwater basin must also meet agricultural water offset requirements



# Pesticide Use on Cannabis & Hemp



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## Pesticide Registration

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### About Pesticide Registration

**On this page:**

- [Pesticide registration process](#)
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### Pesticide Registration Process

The process of registering a pesticide is a scientific, legal, and administrative procedure through which we examine

- the ingredients of the pesticide;
- the particular site or crop where it is to be used;
- the amount, frequency, and timing of its use; and
- storage and disposal practices.

In evaluating a pesticide registration application, we assess a wide variety of potential human health and environmental effects associated with use of the product. The company that wants to produce the pesticide must provide data from studies that comply with our testing guidelines.

We develop risk assessments that evaluate the potential for

- Harm to humans, wildlife, fish, and plants, including endangered species and non-target organisms.
- Contamination of surface water or ground water from leaching, runoff, and spray drift.

### Related Information

**What is a pesticide?**

A pesticide is any substance or mixture of substances intended for


- Preventing, destroying, repelling or mitigating any pest.
- Use as a plant regulator, defoliant, or desiccant.
- Use as a nitrogen stabilizer

[More information on types of pesticides.](#)

[Definition of pesticide in FIFRA](#)

[Types of registrations under FIFRA](#)

[Public involvement in pesticide registration](#)



E. SCOTT PRUITT  
ADMINISTRATOR

June 22, 2017

Mr. Brian R. Leahy  
Director  
California Department of Pesticide Regulation  
1001 I Street  
P.O. Box 4015  
Sacramento, California 95812-4015

**SUBJECT: NOTICE OF INTENT TO DISAPPROVE**  
SLN No. CA170005 – General Hydroponics Prevasyn (EPA Reg. No. 91865-1)  
SLN No. CA170006 – General Hydroponics Exile (EPA Reg. No. 91865-2)  
SLN No. CA170007 – General Hydroponics Defguard (EPA Reg. No. 91865-3)  
SLN No. CA170008 – General Hydroponics Azamax (EPA Reg. No. 91865-4)

Dear Mr. Leahy:

On May 26, 2017, the California Department of Pesticide Regulation issued Special Local Need registrations under Section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act as amended, to Hawthorne Hydroponics LLC d/b/a General Hydroponics. These state registrations, submitted to the U.S. Environmental Protection Agency by Margaret Reiff of CDPR, were issued for the application of capsaicin oleoresin extract, garlic oil and soybean oil (CA170005), potassium salts of fatty acids (CA170006), *Bacillus amyloliquefaciens* strain D747 (CA170007) and azadirachtin (CA170008) to control various insect pests, mites and/or diseases on cannabis. The aforementioned chemicals are not registered by the EPA for use on cannabis.

**Decision:** The EPA concludes that SLN Nos. CA170005, CA170006, CA170007 and CA170008 should be disapproved for the reasons provided below.

**Reasons for Disapproval:** Pursuant to FIFRA section 24(c), the EPA's regulations pertaining to state registrations of pesticides to meet special local needs state that "the Administrator may disapprove, on any reasonable grounds, any state registration which, when compared to a federally registered product, does not have . . . a similar use pattern . . ." 40 C.F.R. § 162.154(a)(1). The regulations define "similar use pattern" to mean "a use of a pesticide product . . . which is [among other things] substantially the same as the federally registered use." 40 C.F.R. § 162.151. Under federal law, cultivation (along with sale and use) of cannabis is


generally unlawful as a schedule I controlled substance under the Controlled Substances Act.<sup>1</sup> The EPA finds that the general illegality of cannabis cultivation makes pesticide use on cannabis a fundamentally different use pattern.

The Administrator may disapprove a different use pattern "on any reasonable grounds." Here, in accordance with 40 C.F.R. section 162.154, the Administrator intends to determine disapproval is reasonable because the EPA does not believe that Congress intended the process under section 24(c) of FIFRA to be used for the purpose of facilitating activities that are generally in violation of federal law. While the EPA believes that it is not required to consider the general cost-benefit standard applicable to FIFRA registrations when disapproving a registration that is inextricably linked with violations of federal law, application of the cost-benefit standard would not yield a different result – any economic, social or environmental costs associated with pesticide use on cannabis would not be reasonable or justified in light of the fact that such use is in furtherance of an illegal act. The EPA has reviewed the SLN registrations submitted by the state and has not identified any significant risks associated with the SLN registrations; the EPA would not have been inclined to disapprove these registrations were cultivation and sale of marijuana generally lawful in the United States.

**Response:** CDPR may request a consultation with the EPA prior to a final disapproval decision within 10 days of receipt of this notice. Alternatively, CDPR may send a withdrawal letter electronically to the EPA within 10 days of receipt of this notice. Failure to respond in a timely and adequate manner may result in disapproval of SLN Nos. CA170005, CA170006, CA170007 and CA170008.

Thank you in advance for your timely response. If you have any questions, please contact Nancy Beck at (202) 564-2910 or beck.nancy@epa.gov.

Respectfully yours,

  
E. Scott Pruitt

cc: Margaret Reiff, California Department of Pesticide Regulation  
Alexis Strauss, Acting Regional Administrator, EPA Region 9

<sup>1</sup> Marijuana, an older spelling of marijuana, and tetrahydrocannabinols are listed under schedule I in 21 U.S.C. section 812(c).



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# CANNABIS

PESTICIDES THAT ARE **LEGAL** TO USE



**Protecting workers, the public, and the environment from adverse effects of pesticide use in cannabis cultivation is critical to the mission of the California Department of Pesticide Regulation (DPR).** DPR and the County Agricultural Commissioners (CAC) enforce the use and sale of pesticides under Divisions 6 and 7 of the California Food and Agricultural Code (FAC), and Title 3 of the California Code of Regulations (CCR). These laws and regulations apply to all pesticide use; cannabis is no exception.

All pesticide product labels include a warning statement, precautionary statements for protecting human and environmental health, storage and disposal statements, and directions for use. By law, all pesticide users must follow these statements.

When using pesticide products in cannabis cultivation, applicators must not use a rate that is higher than the rates listed on the label and follow the agricultural use requirements including method of application, restricted entry interval, personal protective equipment, and pre-harvest interval.

Some pesticide products are never allowed in cannabis cultivation under any circumstances (see DPR's document: Pesticides that Cannot be Used on Cannabis).

## Always read the label prior to using any pesticide.

PRODUCTS THAT CAN BE LEGALLY APPLIED TO CANNABIS IN CALIFORNIA

A pesticide product can legally be applied to cannabis under state law if the active ingredients found in the product are exempt from residue tolerance requirements and the product is either exempt from registration requirements or registered for a use that is broad enough to include use on cannabis.

Residue tolerance requirements are set by U.S. EPA for each pesticide on each food crop and are the amount of pesticide residue allowed to remain in or on each treated crop with "reasonable certainty of no harm." Some pesticides are exempt from the tolerance requirement when they are found to be minimal risk.

Active ingredients exempt from registration requirements are mostly food-grade essential oils such as peppermint oil or rosemary oil.

Cannabis cultivators who are licensed by the California Department of Food and Agriculture are required to comply with pesticide laws and regulations as enforced by DPR and the CAC's.

For more information:  
[www.cdpr.ca.gov/cannabis](http://www.cdpr.ca.gov/cannabis)



## PESTICIDES THAT ARE **LEGAL** TO USE ON CANNABIS

The following are examples of pesticide active ingredients that are exempt from tolerance requirements and either exempt from registration requirements or have labels broad enough to include use on cannabis. This is not an exhaustive list of active ingredients that may fit the legal use criteria. The active ingredients are organized by the intended target.

### Insecticides and Miticides

- Azadirachtin
- *Bacillus thuringiensis* sub. *kurstaki*
- *Bacillus thuringiensis* sub. *israelensis*
- *Beauveria bassiana*
- *Burkholderia* spp. strain A396
- Capsaicin
- Cinnamon and cinnamon oil
- Citric acid
- Garlic and garlic oil
- Geraniol
- Horticultural oils (petroleum oil)
- Insecticidal soaps (potassium salts of fatty acids)
- Iron phosphate
- *Isaria fumosorosea*
- Neem oil
- Potassium bicarbonate
- Potassium sorbate
- Rosemary oil
- Sesame and sesame oil
- Sodium bicarbonate
- Soybean oil
- Sulfur
- Thyme oil

### Fungicides and Antimicrobials

- *Bacillus amyloliquefaciens* strain D747
- Cloves and clove oil
- Corn oil
- Cottonseed oil
- *Gliocladium virens*
- Neem oil
- Peppermint and peppermint oil
- Potassium bicarbonate
- Potassium silicate
- Rosemary and rosemary oil
- Sodium bicarbonate
- *Reynoutria sachalinensis* extract
- *Trichoderma harzianum*

### Vertebrate Repellants

- Castor oil
- Geraniol

Version 12/17

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# Pesticides Exempt from EPA Tolerance Levels

## Electronic Code of Federal Regulations

e-CFR data is current as of **January 23, 2019**

[Title 40](#) → [Chapter I](#) → [Subchapter E](#) → [Part 180](#)

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Title 40: Protection of Environment

### PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

#### Contents

##### Subpart A—Definitions and Interpretative Regulations

- §180.1 Definitions and interpretations.
- §180.3 Tolerances for related pesticide chemicals.
- §180.4 Exceptions.
- §180.5 Zero tolerances.
- §180.6 Pesticide tolerances regarding milk, eggs, meat, and/or poultry; statement of policy.

##### Subpart B—Procedural Regulations

- §180.7 Petitions proposing tolerances or exemptions for pesticide residues in or on raw agricultural commodities or processed foods.
- §180.8 Withdrawal of petitions without prejudice.
- §180.9 Substantive amendments to petitions.
- §180.29 Establishment, modification, and revocation of tolerance on initiative of Administrator.
- §180.30 Judicial review.
- §180.31 Temporary tolerances.
- §180.32 Procedure for modifying and revoking tolerances or exemptions from tolerances.
- §180.33 Fees.
- §180.34 Tests on the amount of residue remaining.
- §180.35 Tests for potentiation.
- §180.40 Tolerances for crop groups.
- §180.41 Crop group tables.

##### Subpart C—Specific Tolerances



- §180.101 Specific tolerances; general provisions.
- §180.103 Captan; tolerances for residues.
- §180.106 Diuron; tolerances for residues.



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# Pesticides Allowed for Use on Cannabis – Both Exempt from Tolerance and Broad Label Directions



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BOTANICAL INSECTICIDE

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**AZADIRACTIN-BASED BOTANICAL ANTIFEEDANT, REPELLANT AND INSECT GROWTH REGULATOR**  
**FOR USE ON GREENHOUSE AND OUTDOOR FOOD CROPS, ORNAMENTAL FLOWERS, TREES, SHRUBS AND PLANTS**

ACTIVE INGREDIENT:	% By Wt.
Azadirachtin .....	1.2%
OTHER INGREDIENTS.....	98.8%
<b>TOTAL</b>	<b>100.0%</b>


Contains 0.0987 lb. (44.8 g) azadirachtin per gallon.

**KEEP OUT OF REACH OF CHILDREN**  
**CAUTION**

**DIRECTIONS FOR USE**  
It is a violation of Federal Law to use this product in a manner inconsistent with its labeling.  
READ ENTIRE LABEL. USE STRICTLY IN ACCORDANCE WITH PRECAUTIONARY STATEMENTS AND DIRECTIONS, AND WITH APPLICABLE STATE AND FEDERAL REGULATIONS. Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your state or tribe, consult the state or tribal agency responsible for pesticide regulation.

**NET CONTENTS \_\_\_\_ GALLONS**

EPA Reg. No. 71908-1-10163  
EPA Est. No.



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# QUESTIONS?

