

COLORADO DEPARTMENT OF AGRICULTURE

Plant Industry Division

8 CCR 1203-26

The use of Pesticides in the Cultivation of Retail Marijuana

Part 1. Construction of Terms, Definitions and Incorporations by Reference. Definition and Construction of Terms

As used in these Rules, unless the context otherwise requires:

- 1.1. "Human Consumption" means the consumption of marijuana by a person through oral ingestion, absorption through the skin or inhalation through smoking, vaporization or other means.
- 1.2. "Pest" as defined in section 35-10-103(9), C.R.S., of the Pesticide Applicators' Act, means any insect, rodent, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or in other living animals) which the Commissioner or the administrator of the Environmental Protection Agency declares to be a pest.
- 1.3. "Pesticide" as defined in section 35-10-103(10), C.R.S., of the Pesticide Applicators' Act, means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term "pesticide" shall not include any article that is a "new animal drug" as designated by the United States food and drug administration.
- 1.4. "Plant regulator" as defined in section 35-10-103(11), C.R.S., of the Pesticide Applicators' Act, means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce thereof; except that "plant regulator" shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, "plant regulator" shall not be required to include any of those nutrient mixtures or soil amendments which are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, which are not for pest destruction and which are nontoxic and nonpoisonous in the undiluted packaged concentration.
- 1.5. "Retail Marijuana" means marijuana cultivated under a license issued by the Colorado Department of Revenue, pursuant to Title 12, Article 43.4, C.R.S.
- 1.6. "Tolerance" means a level of pesticide residue in or on food that the Environmental Protection Agency has determined with reasonable certainty will not pose a hazard to public health when used in accordance with label directions.
- 1.7. "Use" as defined in section 35-10-103(18), C.R.S., of the Pesticide Applicators' Act, means all aspects of the handling of pesticides, including but not limited to the mixing, loading, application or administration, spill control, and disposal of a pesticide or its container.

- 1.8. Material incorporated by reference does not include any later amendments or editions of the incorporated material. Copies of material incorporated by reference in these Rules is available for public inspection during regular business hours. This incorporated material may be obtained at a reasonable charge or examined by contacting the Pesticide Section Chief, Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021. Further, the incorporated material may be examined at no cost on the Internet at:

40 C.F.R., Part 172 (2017): <https://www.ecfr.gov/cgi-bin/text-idx?SID=6ac65677c44bba253a0d63b16ed45e72&mc=true&node=pt40.26.172&rgn=div5>

40 C.F.R., Part 180 (2017): <https://www.ecfr.gov/cgi-bin/text-idx?SID=0eee3cbc0a72651b5b0bf97fd64abd54&mc=true&node=pt40.26.180&rgn=div5>

40 C.F.R., 152.25 (2017): https://www.ecfr.gov/cgi-bin/text-idx?SID=0eee3cbc0a72651b5b0bf97fd64abd54&mc=true&node=pt40.26.152&rgn=div5#se40.26.152_125

Part 2 Use of Pesticides

- 2.1. Both state and federal laws require that pesticides be applied according to label directions. As part of the directions for use, labels for pesticides intended for use on plants specify the crops and/or sites to which they can be applied. In addition, the Environmental Protection Agency sets tolerances that limit pesticide residues in or on food to ensure with a reasonable certainty that no harm will result from aggregate exposures. Certain pesticides however, may be exempted from this tolerance requirement if the Environmental Protection Agency has determined that use in accordance with their label directions poses no hazard to public health. As of the effective date of these Rules, there are currently no pesticides that are specifically labeled or have pesticide residue tolerances established for use on marijuana by the federal government or the state of Colorado. The Colorado Department of Agriculture does not recommend the use of any pesticide not specifically tested, labeled and assigned a tolerance for use on marijuana because the health effects on consumers are unknown.
- 2.2. Notwithstanding the absence of any pesticides specifically labeled for use on marijuana, some pesticides have broad label language that does not prohibit their use on marijuana and are exempt from the tolerance requirements. These Rules set forth the criteria under which certain pesticides may be legally used on Retail Marijuana in the State of Colorado. To assist Retail Marijuana growers, the Department will publish a list of pesticides that it has determined meet these criteria.
- 2.3. Any pesticide used in the cultivation of Retail Marijuana must be registered with the Colorado Department of Agriculture, except for purposes of research and demonstration conducted in accordance with 40 CFR Part 172 (2017)(as incorporated herein by reference).
- 2.4. Any pesticide registered with the Colorado Department of Agriculture may be used in accordance with its label or labeling directions for the cultivation of Retail Marijuana in the State of Colorado under the following conditions:
- 2.4.1. For products registered by the Environmental Protection Agency under Section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act:

- 2.4.1.1. All active ingredients of the pesticide product are exempt from the requirements of a tolerance, as established under 40 C.F.R. Part 180, Subparts D and E (2017) (as incorporated herein by reference), and;
- 2.4.1.2. The pesticide product label allows use on the intended site of application. The term "site" for purposes of this Rule includes any location or crop to which the application is made, and;
- 2.4.1.3. The pesticide product label expressly allows use on crops or plants intended for human consumption, and;
- 2.4.1.4. The active ingredients of the pesticide product are allowed for use on tobacco.
- 2.4.2. Notwithstanding Part 2.4.1.3, the Commissioner has the authority to permit the use of a pesticide product, that does not expressly allow use on crops intended for human consumption if:
 - 2.4.2.1. The active and inert ingredients are exempt under 40 C.F.R. Part 180, Subparts D and E (2017) (as incorporated herein by reference), and;
 - 2.4.2.2. The pesticide product label allows use on the intended site of application, and;
 - 2.4.2.3. The active ingredients of the pesticide product are allowed for use on tobacco by the Environmental Protection Agency.
- 2.4.3. The pesticide product label specifically allows use on marijuana.
- 2.4.4. For 25(b) minimum risk pesticide products as defined in 40 CFR 152.25(f) (2017) (as incorporated herein by reference), the pesticide product label allows use on the intended site of application and allows use on crops or plants intended for human consumption.
- 2.4.5. For pesticide products with a Colorado Special Local Need registration, issued under section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act; the Colorado Special Local Need label allows use on marijuana.
- 2.5. The Commissioner may prohibit the use of any pesticide product for the cultivation of Retail Marijuana if he determines that such use poses a significant threat to public health and safety or the environment.

Parts 3-5 Reserved

Part 6 Statements of Basis, Specific Statutory Authority and Purpose

6.1. Adopted November 9, 2016- Effective December, 30, 2016

Statutory Authority

These Rules are being promulgated pursuant to section 24-20-112(1), C.R.S., in accordance with Executive Order D 2016-009.

This copy of the text of the rules "The use of Pesticides in the Cultivation of Retail Marijuana" is provided as a convenience to the public by the Colorado Department of Agriculture and does not constitute an official publication of these Rules. The official version of these Rules is published by the Office of the Secretary of State in the Colorado Code of Regulations at 8 CCR 1203-26 and may be obtained from the following website: <http://www.sos.state.co.us/CCR/Welcome.do>.

Purpose of These Rules

The purpose of these Rules is to implement the statutory directive set forth in section 24-20-112(1) C.R.S., as specified in Executive Order D 2016-009, to designate the criteria for determining which pesticides may be used in the cultivation of Retail Marijuana.

Factual Basis and Policy Issues

1. Section 24-20-112(1) C.R.S., requires the government to designate a state agency to promulgate rules to establish the criteria for determining which pesticides may be legally used in the cultivation of Retail Marijuana.
2. Executive Order D 2016-009 assigns this responsibility to the Colorado Department of Agriculture.
3. On March 30, 2016, the Colorado Department of Agriculture adopted Rules under the Pesticide Applicators' Act governing the use of pesticides for the cultivation of all Cannabis, published at 8 CCR 1203-2.
4. These Rules, which pursuant to section 24-20-112(1), C.R.S., apply only to Retail Marijuana, set forth the same criteria established for all Cannabis in the Pesticide Applicators' Act Rules.

6.2. Adopted February 22, 2018 – Effective April 15, 2018

Statutory Authority

These Rules are being promulgated pursuant to § 24-20-112(1), C.R.S., in accordance with Executive Order D 2016-009.

Purpose

The purpose of these Rules is to add required provisions to incorporate federal statutory provisions by reference pursuant to § 24-4-103(12.5)(a), C.R.S. Specifically, these Rules:

1. Amend the title to Part 1 of the Rule to include "Incorporation by Reference".
2. Amend Part 1 by adding a new Rule 1.8 to address the incorporation by reference provisions.
3. Amend Rules 2.4.1.1, 2.4.2.1, and 2.4.4 by updating the edition date of the cited Code of Federal Regulations ("C.F.R.").
4. Amend Rule 2.3 to allow the use of unregistered pesticides in the cultivation of retail marijuana for research and demonstration purposes only.

Factual and Policy Issues

The factual and policy issues encountered when developing these Rules include:

1. On November 9, 2016, the Commissioner adopted Rules in accordance with Executive Order D 2016-009 to establish criteria for determining which pesticides may be legally used in the cultivation of Retail Marijuana. In this Rule the Department referenced the C.F.R.

2. On November 6, 2017, the Department was notified by the Office of Legislative Legal Services that the Department's C.F.R. references incorporated into Rule did not comply with the requirements of § 24-4-103 (12.5)(a), C.R.S.
3. The proposed Rule changes amend the title of Part 1 to add "Incorporations by Reference" and add a new Rule 1.8 to meet required provisions to incorporate by reference set forth in § 24-4-103 (12.5)(a), C.R.S.
4. Rules 2.4.1.1, 2.4.2.1, and 2.4.4 are amended to update the C.F.R. edition date to meet required provisions of incorporate by reference as set forth in § 24-4-103 (12.5)(a), C.R.S.
5. On November 9, 2016, the Commissioner adopted Rules that outlined the criteria for which pesticides may be applied in the cultivation of retail marijuana. Specifically, Rule 2.3 limited the use of pesticides in the cultivation of retail marijuana to registered pesticides only. In May 2017, HB 1367 was passed to allow marijuana cultivators and other persons to conduct research and demonstration activities related to pesticide use on marijuana. Research and demonstration activities are for the purpose of developing data on currently unregistered pesticides or pesticides that are not registered for a specific use. The Department proposes to amend Rule 2.3 to allow the use of unregistered pesticides in the cultivation of retail marijuana for research and demonstration purposes in accordance with the intent of HB 1367 and 40 C.F.R. Part 172.