

Cannabis Guidance for NRCS California Employees



Recent changes in California state law regarding the use of recreational marijuana has caused some confusion regarding conservation services possible through the federal Natural Resources Conservation Service (NRCS) in California. This FAQ is intended to clarify assistance that is and is not possible in this evolving climate.

Under the federal Controlled Substances Act (21 U.S.C. Section 801 et seq., 21 CFR Part 1308), marijuana is a Schedule-I controlled substance. Therefore, regardless of any changes in state law, it remains illegal under federal law for producers to grow, sell, or possess any amount of marijuana.

When a producer signs a conservation contract with NRCS, it is expected that they read and understand the contract language which states that the producer agrees to comply with the terms and conditions of the contract and all applicable federal, state, tribal, and local laws. This includes laws pertaining to controlled substances.

NRCS is unable to provide technical assistance and financial assistance on any field that is producing marijuana or other controlled substances in violation of federal law, even if the cultivation of such controlled substances are lawful under state or tribal law.

Limited technical assistance may be possible under conditions discussed in this document.

The Role of NRCS Employees in Identifying/Reporting Cannabis Production

1) Q: What do we do when a landowner challenges our contention that they are growing cannabis, i.e. I received a report from a co-worker that she clearly saw cannabis growing on a landowner's property, but the landowner denied it was cannabis.

A: When you first make your visit to the site and believe that cannabis is being grown, photograph it so that it is part of the record. If this becomes part of a contract action related to program participation, there is an opportunity for participants to demonstrate their compliance by providing additional information or appealing the NRCS determination.

2) Q: As NRCS employees are we required to notify FSA if we know there are customers of theirs growing cannabis?

A: There are no specific requirements for NRCS to notify FSA regarding a USDA customer growing cannabis. However, when NRCS provides technical assistance for conservation compliance activities, specific FSA program implementation, and other areas where the two agencies' activities overlap, NRCS should notify FSA as part of our technical assistance role.



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Additionally, even if NRCS is not providing technical assistance specifically on behalf of FSA, it is likely good office practice to notify FSA when we are aware of such activity with respect to one of their customers. In this manner, FSA may make their own determination with respect to their programs.

3) Q: How do we determine if a grower is a cannabis producer or not? I'm not sure I would be able to definitively identify a pot plant.

A: As discussed above, it is good field practice to photograph the plant suspected of being cannabis and consult a plant specialist to confirm.

4) Q: Are we expected or allowed to report likely illegal cannabis production sites? What are the consequences if we fail to do so?

A: NRCS is not responsible for drug enforcement. NRCS access to producer properties is subject to Section 1619 of the Food, Conservation, and Energy Act of 2008, under which NRCS is required to maintain the confidentiality of information about a producer's operation.

5) Q: What should we do if we come across a pot producer?

A: If the producer participates in one of our conservation programs, then the participant is notified about the potential violation of the Drug Free Workplace provision in their contract and given the opportunity to come back into compliance. If there are safety concerns, such as illegal growing of marijuana on the land of someone else, you should report it to your supervisor in accordance with the safety policies within your office. Otherwise you have no responsibility.

6) Q: If a landowner is assisted by a local Resource Conservation District to grow cannabis

and NRCS is made aware of this through office talk, is NRCS required to confront the landowner or only if NRCS staff themselves witness the cannabis in the field?

A: If the producer has a conservation program contract with us, we need to make the farmer aware of the potential violation and, again, give them the opportunity to come into compliance.

7) Q: If NRCS identifies cannabis in the field and the landowner does not accept our assessment can we enforce our policy?

A: Yes. You are required to comply with policy that our assistance cannot take place on farms growing cannabis. You may photograph the plant and send it along with a letter to the operator and let them know we will need to terminate assistance unless they come into compliance.

8) Q: I have heard that our current policy is limited to Farm Bill programs i.e. EQIP, CSP, WRE etc., and therefore not applicable to CTA and EWP. Is this true? This seems to be born out of the Contract Appendix language associated with a 'drug free workplace'. If we are only providing technical assistance via CTA, there is no appendix.

A: All federal assistance is covered by the prohibition relative to growing cannabis. The scope of the limitation of our assistance depends upon whether we are providing technical assistance only or whether we are providing both technical and financial assistance pursuant to any of our conservation programs. Where we are only providing technical assistance, then we cannot provide technical assistance on any land that is being used to grow cannabis, but may provide technical assistance on any other land that is farmed by our customer. However, all financial assistance activities are subject to Drug-Free Workplace prohibitions.



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We cannot provide financial assistance for activities on any land that is being used to grow cannabis or any other land that is part of that customer's operation.

Entities and operations

The operator of record is the party that we work with to assure compliance with our policies including the prohibition of growing cannabis.

1) Q: Current NRCS policy references 'agricultural operations' with respect to prohibition of providing financial or technical assistance. If we discover cannabis growing outside of what landowner has defined as their 'agricultural operations' as defined by farm records established with FSA, are we still prohibited from providing assistance?

A: If the farmer is growing cannabis on land that is not part of their operation, then we can provide assistance for activities on the operation itself but not any land that is associated with the land that is being used to grow cannabis. This is because the restriction related to our financial assistance is limited to the area that constitutes the work place of our customer.

2) Q: What about land that is owned by one person that has been split with two operators. One grows marijuana, one does not. Can the other tenant that is adjacent to marijuana apply if they lease off the same parcel but have no interest in the marijuana?

A: The tenant without the cannabis is eligible for assistance.

3) Q: If a landowner has different parcels of land and is growing cannabis on one parcel (e.g. the home base), and is not requesting our assistance on that particular parcel, may NRCS provide assistance on the other parcels where no

cannabis is being grown?

A: NRCS may provide assistance on the other parcels only if those parcels are not part of the same operation as the parcel on which the cannabis is being grown. Operators who are not growing cannabis are eligible for assistance.

4) Q: Are we prohibited from working any part of an operation that grows cannabis on only the enterprise/fields where it is cultured?

A: Yes, if you see cannabis being grown on part of an operation, you may not conduct any activity related to conservation program participation on any part of that operation. If you are on the operation for technical assistance purposes only, unrelated to any conservation program, then you are only prohibited from working on the land that is being used to grow cannabis but may provide technical assistance on land unassociated with the growing of cannabis.

5) Q: If a landowner interested in our programs leases out part of his land to cannabis growers and then requests assistance only for the land he is not leasing out, where no cannabis is being grown, is this okay?

A: The leased land growing the cannabis is under the control of the lessee and the owner would be eligible for assistance on the land that he did not lease out.

Miscellaneous

1) Q: Can we do erosion control on ground that used to have cannabis but all the plants have been burned away (recent fires)?

A: Yes, NRCS can provide erosion control assistance if the cannabis plants are gone and are not going to be replanted.



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2) Q: *What about providing technical review or support to partners who are working on projects that provide information to minimize adverse impacts to natural resources resulting from cannabis production? Example, ag commissioners, conservation districts, others who may provide information on proper chemical storage facilities, water use, setbacks from waterways, etc. I understand we would not provide direct support to producers for any such projects, but what about review of written materials, training curriculum, etc. that would target minimizing adverse impacts on resources?*

A: If we are not going on the property or providing direct assistance to the landowner this assistance would probably be prudent inasmuch it is still our mission to address natural resource issues associated with agricultural production. In this case the customer is the partners and not the grower.

3) Q: *What if a customer changes to cannabis after a contract has been obligated?*

A: The customer becomes ineligible or in violation of his contract.

4) Q: *Are there certain varieties of cannabis that are acceptable to work with (i.e., hemp, ornamental, non-THC strains)?*

A: NRCS may provide technical and financial assistance to a producer of industrial hemp who is growing the industrial hemp in compliance with Section 7606 of the Agricultural Act of 2014. Section 7606 provides a limited exception where the industrial hemp production is pursuant to a pilot research project conducted by a State Department of Agriculture or university. It is the producer's responsibility to provide documentation that their activities meet the requirements of Section 7606.

5) Q: *If a producer has a California medical license to grow marijuana and is doing so, can we still provide CTA? Can they have an EQIP contract?*

A: No.

6) Q: *If a property has marijuana on-site with no license, can we work with that property?*

A: No.

7) Q: *Do we have to ask to see a license, or just self-certification from point of contact?*

A: Whether or not the producer has a license, NRCS cannot provide assistance.

8) Q: *Will there be any distinction between a producer growing a handful of plants for personal use and those who are growing commercially?*

A: No. Neither is eligible for assistance.

More Information



California
Cannabis Portal

<https://cannabis.ca.gov/contact-us/>

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