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# 2023 AAPCO Annual Spring Meeting and Conference

## Preemption Panel Discussion



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## How many roads must a man walk down...

- Since 2006, Colorado has had five challenges to state preemption
- Each Sunset review of the PAA the issue has come up
  - 2006, 2015, 2023
- Three challenges in the last four years
  - 2020 – Covid ended the legislative session early. No bill introduced
  - 2022 – Bill introduced
  - 2023 - ???





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## 2022 Preemption Debate

- Bill removed all provisions regarding preemption and added a few things, specifically:

WHILE THE STATE HAS PRIMARY ENFORCEMENT RESPONSIBILITY, **LOCAL GOVERNMENTS MAY REGULATE THE USE AND APPLICATION OF A PESTICIDE** IN THE INTEREST OF PUBLIC HEALTH, PUBLIC SAFETY, AND ENVIRONMENTAL PROTECTION IF THE REGULATION MEETS THE REQUIREMENTS OF BOTH STATE AND FEDERAL LAW;



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## 2022 Preemption Debate

(2) A local government shall not adopt or continue in effect any ordinance, rule, resolution, charter provision, or statute regarding the use of any pesticide by persons regulated by this article or federal law and pertaining to:

(b) (I) The use and application of pesticides IN CONNECTION WITH THE CULTIVATION OF MARIJUANA by persons regulated by this article ARTICLE 10 or federal law; including but not limited to, ~~directions for use, classification of pesticides as general or restricted use, mixing and loading, site of application, target pest, dosage rate, method of application, application equipment, frequency and timing of applications, application rate, reentry intervals, worker specifications, container storage and disposal, required intervals between application and harvest of food or feed crops, rotational crop restrictions, and warnings against use on certain crops, animals, or objects or against use in or adjacent to certain areas~~

~~(c) Except as specifically provided in this article, any warnings and precautionary statements, notifications, or statements of practical treatment; or~~



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## Question?

Do local governments want to regulate what can be applied and where?

OR

Do local governments want to regulate all aspects of pesticide use, including enforcement of the pesticide label?

**The Scientific Method**



" ..Here are the facts, what conclusions can we draw from them?.."

**The Political Method**



" ..HERE IS MY CONCLUSION. WHAT FACTS CAN WE USE TO SUPPORT IT? .."



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## Part 171.303(b)(6)

(6) The application for Agency approval of a **State certification plan must include all of the following:**

(i) A written statement by the Governor of the State designating a lead agency responsible for administering the State certification plan. The lead agency will serve as the central contact point for the Agency. The **State certification plan must identify the primary point of contact at the lead agency responsible** for administering the State certification plan and serving as the central contact for the Agency on any issues related to the State certification plan. **In the event that more than one agency or organization will be responsible for performing functions under the State certification plan, the application for Agency approval of a State plan must identify all such agencies and organizations and list the functions to be performed by each, including compliance monitoring and enforcement responsibilities.** The application for Agency approval of a State plan must indicate how these functions will be coordinated by the lead agency to ensure consistency of the administration of the State certification plan.



## Part 171.303(b)(6)

- (ii) A written opinion from the State attorney general or from the legal counsel of the State lead agency that states that the lead agency and other cooperating agencies have the legal authority necessary to carry out the State certification plan.
- (iii) A listing of the qualified personnel that the lead agency and any cooperating agencies or organizations have to carry out the State certification plan. The list must include the number of staff, job titles, and job functions of such personnel of the lead agency and any cooperating organizations.
- (iv) A commitment by the State that the lead agency and any cooperators will ensure sufficient resources are available to carry out the applicator certification program as detailed in the State certification plan.
- (v) A document outlining the State's proposed approach and anticipated timeframe for implementing the State certification plan after EPA approves the State certification plan.



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## Part 171.303(b)(7)

(7) The **application for Agency approval of a State certification plan** must include a **complete copy of all State laws and regulations** relevant to the State certification plan. In addition, the application for Agency approval of a State plan must **include citations to the specific State laws and regulations that demonstrate specific legal authority** for each of the following:





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## Part 171.303(b)(7)(i-vii)

- Denying, revoking, suspending certification
- Assessing criminal and civil penalties
- Right of Entry for sampling, inspection and observation
- Unlawful use of RUPs by non-certified operators
- Recordkeeping provisions
- Requirements to submit reports to the Agency (via the primary SLA)



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## Conclusions and Concerns

- C&T Plans would need to be updated and resubmitted for approval EACH time a new municipality decided they wanted to regulate use
- Concerns of inconsistent enforcement between municipalities - Label interpretation
- Reporting would need to come back through the SLA





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# 2023 Legislative Session

What and where

OR

???



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**Thank You!**

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