



# Legislative Council Staff

## Research Note

Version: Final

Date: 2/19/2016

### Bill Number

**Senate Bill 16-015**

### Sponsors

**Senator Baumgardner  
Representative Vigil**

### Short Title

***Rules For Allowed Marijuana  
Pesticides***

### Research Analyst

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### Status

This research note reflects the final version of the bill. The bill takes effect August 10, 2016, if adjournment sine die is on May 11, 2016 and no referendum petition is filed.

### Summary

This bill requires the Governor to designate a state agency to promulgate rules that identify pesticides that may be used in the cultivation of retail marijuana. The designated agency is required to publish a list of pesticides that meet the criteria on its website.

### Background

In 2012, voters approved Amendment 64, which legalized the sale and use of retail (non-medical) marijuana sold to adults 21 years of age and older. On May 28, 2013, Senate Bill 13-283 was signed into law. This act authorizes the Governor to designate specific state agencies with tasks relating to the processing, cultivation, handling, and laboratory practices for the retail marijuana industry. The act also requires the Governor to designate one or more state agencies to compile a list of pesticides that *cannot* be used in the cultivation or processing of marijuana. Executive Order D2013-007 designates the Colorado Department of Agriculture (CDA) to address pesticides for marijuana and encourages the department to consult with other state agencies including the Colorado Department of Revenue (CDR) and the Colorado Department of Public Health and Environment (CDPHE) as it compiles the list of banned substances. The CDA is also required to form and work with a private advisory group to develop good cultivation and handling practices for the marijuana industry.

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**Federal and state regulation of pesticides.** Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Environmental Protection Agency (EPA) regulates pesticides that are sold and distributed in the United States. The EPA also evaluates and approves the language that appears on each pesticide label to ensure safe use of the product. Because marijuana remains a schedule 1 narcotic under the Controlled Substances Act, the EPA has neither assessed the potential health hazards posed by treating marijuana with pesticides, nor has it authorized the application of any pesticide specifically for use on marijuana.

The State of Colorado regulates pesticide use pursuant to the Colorado Pesticide Applicators' Act and rules promulgated under the act. On November 12, 2015, Governor Hickenlooper issued the Statewide Marijuana Pesticides Policy Statement. According to this statement, a pesticide registered with the CDA may be used in accordance with its label directions for the cultivation of marijuana in the state of Colorado under the following conditions:

- the label allows for use on unspecified crops and/or plants (e.g. "bedding plants," "flowering plants," "other crops");
- the label allows for use at the intended site of application (e.g. allowed use in greenhouses);
- the label directions do not prohibit use on crops or plants for human consumption; and
- use of the pesticide complies with rules promulgated by CDA governing pesticide use on marijuana.

A list of pesticides that meet these criteria is available on the CDA's website.

CDA has the authority under FIFRA to register an additional use of a federally registered pesticide product or a new end use product for use in "special local need" situations. These registrations, reviewed and issued by CDA, become federal registrations under FIFRA, but can only be distributed and used within the state of Colorado. EPA is responsible for overseeing the general program and has 90 days to perform a limited review of these registrations. The EPA can require modifications to the SLN registration or, in some cases, disapprove the SLN registration.

The CDPHE is authorized to advise the CDR Marijuana Enforcement Division (MED) on which course of action best protects public health. According to the Governor's policy, the "CDPHE shall deem any marijuana contaminated by a pesticide that does not meet the state's criteria a risk to public health, and MED is authorized to find such contaminated marijuana a threat to public safety." In the event the misapplication of pesticides on marijuana is identified by CDPHE, CDA, MED, or any other authority, it is CDPHE's policy to strongly advise that MED place an administrative hold on the affected crops and any resulting products pending further investigation and process.

## Senate Action

**Senate Agriculture, Natural Resources, and Energy Committee (January 28, 2016).** At the hearing, a representative from the Colorado Department of Agriculture testified in support of the bill. The committee approved the bill without amendment and recommended that it be placed on the consent calendar.

**Senate second reading (February 2, 2016).** This bill was unamended in Senate second reading.

**Senate third reading (February 3, 2016).** This bill was unamended in Senate third reading.

## House Action

***House Agriculture, Livestock, and Natural Resources Committee (February 10, 2016).*** At the hearing, a representative from the Colorado Department of Agriculture testified in support of the bill. The committee approved the bill without amendment.

***House second reading (February 16, 2016).*** This bill was unamended in House second reading.

***House third reading (February 18, 2016).*** This bill was unamended in House third reading.

## Relevant Research

Legislative Council Staff, Marijuana Regulation Issue Brief, January 2015, <http://tinyurl.com/q5uoqey>

Amendment 64 Task Force, Final Report, March 2013, <http://tinyurl.com/d6x5nj5>