

Handbook of Florida Water Regulation: Federal Insecticide, Fungicide, and Rodenticide Act¹

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Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principal federal and state (Florida) laws that directly or indirectly relate to agriculture. This handbook provides a basic overview of the many rights and responsibilities that farmers and farmland owners have under both federal and state laws as well as the appropriate contact information to obtain more detailed information. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time. Several details of cited laws are also left out due to space limitations.

This handbook is distributed with the understanding that the authors are not engaged in rendering legal or other professional advice, and the information contained herein should not be regarded as a substitute for professional advice. This handbook is not all inclusive in providing information to achieve compliance with the federal and state laws and regulations governing water protection. For these reasons, the use of these materials by any person constitutes an agreement to hold harmless the authors, the Florida Cooperative Extension Service, the Institute of Food and Agricultural Sciences, and the University of Florida for any liability claims, damages, or expenses that

may be incurred by any person as a result of reference to or reliance on the information contained in this handbook.

FIFRA Overview

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) was originally passed in 1947 and significantly amended in the 1970s. These and subsequent amendments regulate all phases of pesticide sale, use, handling, and disposal. In 1996, the Food Quality Protection Act (FQPA) again amended FIFRA, especially the process of establishing tolerances for pesticide residues in food and feed (see FE589). The Florida Legislature also enacted the Florida Pesticide Law (FPL) for the purpose of regulating the distribution, sale, and use of pesticides in Florida and to protect people and the environment from the adverse effects of pesticides (see FE590).

Definitions for FIFRA Pesticide

The term “pesticide” is broadly defined within the meaning of FIFRA as (a) any substance used to regulate, prevent, repel, or destroy any pest or plant; (b) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; or (c) any nitrogen stabilizer. Pesticide, however, shall not include any article that is an “animal drug” (or an animal feed containing or bearing

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an animal drug). New animal drugs are regulated by the federal Food, Drug, and Cosmetic Act (FDCA), and all other animal drugs are regulated by the Secretary of Health and Human Services.

Pest

The term “pest” includes insects, rodents, nematodes, fungus, weeds, terrestrial and aquatic plants, viruses, bacteria, and any other living organism that the United States Environmental Protection Agency (EPA) designates as a pest.

Who Enforces FIFRA?

FIFRA is administered by EPA, but specifies that states are to have primary enforcement responsibility if they demonstrate to EPA that they have adopted adequate regulations and enforcement mechanisms. Florida has entered into several cooperative agreements with EPA and now shoulders the responsibilities for testing and training permit applicants, with EPA in a supervisory position. Although EPA regulates the federal registration of pesticides and the monitoring of pesticide producers, states are allowed to impose regulations on pesticide sales and uses so long as those regulations do not allow any activity that violates FIFRA. If a complaint is made to EPA concerning state regulation of pesticides, EPA can give a state notice of the complaint, and if the state fails to take adequate remedial action within 90 days, EPA can rescind the state’s enforcement power.

What Do Pesticide Labels Mean?

One of the most significant aspects of FIFRA is the body of labeling requirements. Under the Act, pesticides must be labeled, listing the following information:

- The ingredients
- Instructions for use
- The EPA registration number
- All necessary warnings or restrictions

FIFRA requires strict compliance to the instructions printed on all pesticide labels. Labeling changes must meet National Institute for Occupational Safety and Health requirements.

Pesticide labels are also important because they have become a central tool of enforcing FIFRA and state laws

(see FE590, “What Is So Important about Pesticide Labels?” section).

Which Pesticides Need Registration, Licensing, and/or Permitting?

FIFRA requires that all pesticides be registered with EPA before they may be sold, distributed, or used. A pesticide’s registration may be canceled by EPA if the manufacturer fails to have it re-registered or if EPA later determines it to be harmful. For more information about EPA’s cancellation policy, see <http://www.epa.gov/opp00001/regulating/cancellations.htm>.

States may impose additional conditions on pesticide use where special problems related to their use are encountered. Pesticides are divided into two categories, general or restricted use, based on the potential for adverse effects. Some pesticides can be classified for both general and restricted use.

General-Use Pesticides

General-use pesticides may be applied by anyone and no permit is required although the user must still comply with labeling requirements, label instructions, and other regulations.

Restricted-Use Pesticides

Restricted-use pesticides may be applied by three categories of applicators as follows:

1. Private applicators who apply pesticides in producing an agricultural commodity on their own lands or on lands under their control. Applicators must be aware of regulatory restrictions to avoid adverse effects on the environment. Private applicators must be licensed to use pesticides.
2. Commercial applicators who apply pesticides to other people’s lands in exchange for a fee. Commercial applicators are also required to be licensed.
3. Experimental use applicators, who are usually manufacturers or researchers, are required to have an experimental-use permit to test an unregistered pesticide in order to gather data to support its registration.

Restricted-use applicators must keep records comparable to commercial applicators. The state can require specific minimum training for all applicators.

Each permitting category is subject to separate testing and certification procedures and may be subject to different penalties for violations.

What Are the Rules for Storing and Disposing of Pesticides?

The FIFRA requirements for adherence to label instructions also extend to the storage and disposal of pesticides. Furthermore, pesticides often fall within the “hazardous waste” classifications of the Resource Conservation and Recovery Act (RCRA), and are usually subject to “solid waste” disposal regulations. The RCRA and FIFRA sections of this publication should be reviewed before storing or disposing of any pesticides.

EPA provides guidelines for the storage and disposal of pesticides that, while not mandatory, are helpful in dealing with the specifics of locating storage sites, protecting groundwater, and avoiding environmental contamination.

What Are the Penalties under FIFRA?

Commercial applicators, wholesalers, dealers, retailers, registrants, or distributors who violate FIFRA or their permits are subject to civil fines of up to \$5,000 per offense. No civil penalties can be assessed against these parties without a hearing. They are also subject to criminal penalties of \$25,000 and one year’s imprisonment for knowing violations.

Private applicators are entitled to a written warning. First violations by private applicators, who use or hold registered pesticides or use dilutions of registered pesticides only to provide a service of pest control in violation of FIFRA, are punishable by a civil penalty of up to \$500; subsequent violations may be punished by a fine of up to \$1,000. Knowing violations may bring criminal fines of \$1,000 and/or 30 days’ imprisonment.

Producers of pesticides, registrants, and applicants for registration, who knowingly violate FIFRA, are subject to criminal penalties of up to \$50,000 and one year’s imprisonment. However, no private right of action exists under FIFRA regulations. Employers may also be assessed for the violations of their employees or agents acting on their behalf.

Violators of FIFRA may also be subject to penalties under the federal Food, Drug, and Cosmetic Act (FDCA);

Resource Conservation and Recovery Act (RCRA); and Occupational Safety and Health Act (OSHA).

Pesticide drift and runoff containing pesticides are major water pollutants from nonpoint sources. These chemicals can enter and contaminate water, killing fish and wildlife, poisoning food sources, and destroying the habitat of animals. Careless use and or disposal of pesticides can lead to violations, liability, and penalties under several of the acts and programs discussed in this handbook. To reduce nonpoint source contamination from pesticides and liability for contamination, pesticide users can apply Integrated Pest Management (IPM) techniques based on specific soils, climate, pest history, and crop for a particular field. IPM helps to minimize the need for pesticide use and manages necessary applications to minimize pesticide movement from the land. More information about IPM in Florida can be found at https://edis.ifas.ufl.edu/topic_pest_management.

What Is Exempt from FIFRA?

No pesticides, devices, or active ingredients used in producing pesticides intended only for export to a foreign country will be deemed a violation of FIFRA when they are prepared or packaged according to the directions of the foreign purchaser, except that producers of such pesticides, devices, and active ingredients used in producing pesticides will be subject to the storage, disposal, transportation, registration, and record-keeping provisions of FIFRA, and in the case of a pesticide not registered under FIFRA or sold from existing stocks and whose registration is suspended or cancelled if, prior to export, the foreign purchaser has signed a statement acknowledging that the purchaser understands that such pesticide is not registered for use in the United States and cannot be sold in the United States under FIFRA. A copy of this statement is to be transmitted to the appropriate government official of the importing government.

The Administrator of EPA may, at his or her discretion, exempt any federal or state agency from any provision of FIFRA, if the Administrator determines that emergency conditions exist that require such an exemption. In determining whether or not such emergency conditions exist, the Administrator must consult with the Secretary of Agriculture and the governor of any state concerned if they request such a determination.

For the latest list of exemptions from FIFRA, please contact EPA.

Source

7 United States Code, Sections 136 to 136y

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