

Handbook of Florida Water Regulation: Florida Pesticide Law¹

Michael T. Olexa and Zachary Broome²

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decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time.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.

FPL Overview

The Florida Legislature 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, similar to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (see [FE588](#)) and the federal Food Quality Protection Act (FQPA) (see [FE589](#)). To the extent that regulations under the FPL do not violate federal pesticide law, the state pesticide regulations can be more restrictive than the federal ones.

Who Enforces FPL?

FPL is administered and primarily enforced by the Florida Department of Agriculture and Consumer Services (FDACS). Just like the United States Environmental Protection Agency (EPA) under FIFRA, under FPL, every pesticide distributed, sold, or offered for sale within the state or transported in intrastate commerce, as well as the applicable establishment or organization, must be registered with FDACS and renewed annually.

1. This is EDIS document FE590, a publication of the Food and Resource Economics Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL. Published December 2005, revised June 2011. Please visit the EDIS website at <http://edis.ifas.ufl.edu>.
2. Michael T. Olexa, professor, Food and Resource Economics Department, and director, Agricultural Law Center, University of Florida, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL, and chair, Agricultural Law Committee, The Florida Bar, and Zachary Broome, student, Levin College of Law, University of Florida, Gainesville, FL 32611.

What Are the Duties and Powers of FDACS under FPL?

FDACS has numerous duties and powers under FPL, including but not limited to:

- Adopting rules governing the procedures for pesticide registration and reviewing data submitted by applicants for pesticide registration
- Determining whether a pesticide should be registered, registered with conditions, or tested under field conditions in Florida
- Refusing or revoking the registration of any pesticide due to adulteration, misbranding, or other good cause, but only after giving notice to the applicant or registrant of the reason for the decision
- Requesting EPA to require registrants of pesticides to provide FDACS with environmental test data generated in Florida or from simulations of Florida's environmental conditions
- Requesting information from EPA relating to the findings on which EPA based its registration determinations for pesticides registered in Florida
- Entering onto any public or private premises or carrier, during normal business hours, where pesticides are known or thought to be distributed, sold, offered for sale, stored, or applied, in performance of its duties under FPL (no person can deny FDACS access to these premises or carrier under this condition)
- Sampling and testing pesticides that are sold, distributed, or used in Florida to determine if the pesticides or persons exercising control over the pesticides are in compliance with FPL

What Is the Pesticide Review Council?

Created within FDACS by FPL, the Pesticide Review Council (PRC) advises the Florida Commissioner of Agriculture regarding the sale, use, and registration of pesticides, and advises state government agencies on the activities related to their pesticide responsibilities.

PRC consists of eleven members, appointed for a term of four years, representing FDACS, FDEP (Florida Department of Environmental Protection, FDOH (Florida

Department of Health), FFWCC (Florida Fish and Wildlife Conservation Commission), UF/IFAS (Institute of Food and Agricultural Services at the University of Florida), and six members appointed by the governor. The governor selects one person from each of the following: the pesticide industry, an environmental group, a hydrologist, a toxicologist, a representative from one of the five Florida water management districts, and a representative from a list of three nominations generated by the statewide growers associations.

What Are the Duties and Powers of PRC under FPL?

Under FPL, PRC has several powers and duties, including but not limited to:

- Recommending appropriate scientific studies on any registered pesticide when preliminary data indicate that the pesticide could pose an unreasonable adverse effect on the environment or human health
- Making recommendations, subject to a majority vote, directly to the Florida Commissioner of Agriculture for actions to be taken on the sale or use of a pesticide which PRC has reviewed
- Reviewing biological and alternative controls to replace or reduce pesticide use
- Assisting FDACS in the review of registered pesticides that are selected for special review based on potential environmental or human health effects

FDACS must consult with PRC in the special review process, which includes selecting pesticides for special review, providing periodic updates to PRC on preliminary findings as a special review process progresses, and formulating final recommendations on any pesticide that has gone through a special review.

More information about PRC can be found at the PRC website at <http://www.flaes.org/pesticide/pesticidereview-council.html>.

What Is So Important about Pesticide Labels?

Pesticide labels have become a central tool for enforcement of both FIFRA and state law. Under FIFRA, users must comply with all the application and precautionary instructions on the label. In this sense, the label is the law. Failure

to comply with the label can result in strict penalties. It is important to note that the farmer can be penalized even if an employee of the farmer was responsible for the failure to follow the label instructions.

FPL excuses pesticide users from following the instructions on the label only to the extent as follows:

- The pesticide, including a restricted-use pesticide, may be applied in lesser dosages, concentrations, or frequencies than recommended by the label
- The pesticide, including a restricted-use pesticide, may be used against a pest not specified as a target pest by the label, so long as the application is to a crop, animal, or site specified by the label, and the label does not prohibit the application
- Applicators may employ any method of application not prohibited by the labeling
- Applicators may mix the pesticide, including a restricted-use pesticide, with a fertilizer when not prohibited by the labeling

What Are General-Use and Restricted-Use Pesticides?

Like EPA, FDACS has classified all pesticides, based on their active ingredient(s), as either “general-use” or “restricted-use” pesticides.”

General-Use Pesticides

General-use pesticides are pesticides that may be applied by anyone and require no permits; however, the user must comply with labeling requirements, label instructions, and other regulations (see FE588, FIFRA).

Restricted-Use Pesticides

FPL restricts who may apply restricted-use pesticides to roughly the same three categories of applicators as FIFRA, only FPL refers to these three categories as certified public applicator, certified private applicator, and certified commercial applicator. For the restrictions placed on each category of applicator, see the FIFRA Restricted-Use Pesticides section of FE588.

All EPA restricted-use pesticides are incorporated into the FDACS list by reference. FDACS has also issued its own list, however, so a pesticide could conceivably be restricted in Florida while still open to general use under EPA rules. For

information about pesticides classified for restricted use in Florida, see UF EDIS publication PI073, Restricted Use of Pesticides.

Both FIFRA and FPL provide for different types of licenses for private and commercial applicators of restricted-use pesticides. Generally, private applicators are authorized to apply pesticides to their land only. Testing and other requirements are different for private and commercial applicators. The distinction is also important with regard to license violations, as commercial applicators are subject to substantially more severe penalties than private applicators. More information about pesticide application licenses and training in Florida can be found at the FDACS website at <http://www.freshfromflorida.com/onestop/aes/pestapp.html>.

What Are Anti-Siphon Requirements

FPL requires that all irrigation systems that are used to administer crop management materials (e.g., pesticides and fertilizers) be equipped with anti-siphon devices to prevent the backflow of pesticide- or fertilizer-contaminated water into the aquifer. These rules also apply to pesticides pre-mixed with fertilizer, although such mixtures must be clearly labeled as such before they may be offered for sale, and to water supply lines to pesticide mixing-loading equipment. The specifications for anti-siphon devices are spelled out in the rules promulgated by FDACS.

What Are the Penalties under FPL?

If any person, applicant, or licensee violates any provision of FPL, FDACS may do the following:

- Deny an application for licensure
- Revoke or suspend a license
- Issue a warning letter
- Place the licensee on probation and require the licensee to attend educational classes to demonstrate competency through a written or practical examination, or to work under the direct supervision of another licensee
- Impose an administrative fee not to exceed \$10,000 for each violation

- Bring an action to enjoin the violation or threatened violation of FPL in the circuit court of the county in which the violation occurs or is about to occur

After presenting to the court competent and substantial evidence of the violation or threatened violation, the court must immediately issue the temporary or permanent injunction sought by FDACS, without bond.

Violating any part of FPL is a second-degree misdemeanor punishable by a fine of up to \$500 and/or up to 60 days' imprisonment. Any subsequent violation is a first-degree misdemeanor punishable by a fine of up to \$1,000 and/or up to one year's imprisonment.

Misdemeanors are crimes that are punishable by imprisonment of one year or less, and felonies are crimes that are punishable by imprisonment of more than one year. Misdemeanors and felonies are further classified by degrees according to the level of severity, with first degree being the most serious crimes.

What Is Exempted from FPL?

Exemptions from FPL include:

- The distribution, sale, and use of pesticides governed under Chapter 388 (Mosquito Control) and Chapter 482 (The Structural Pest Control Act) of the Florida Statutes
- Public officials of Florida state government and the federal government engaged in the performance of their official duties
- Pesticides or devices intended solely for export to a foreign country, and when prepared or packed according to the directions of the purchaser
- The personnel of governmental, university, or industrial research agencies only when doing applied research within a laboratory

For more information on FPL, including the latest list of exemptions, and registration and licensing fees, contact FDACS.

Source

Chapter 487, Florida Statutes, Sections 487.011 to 487.175

Acknowledgments

The authors are indebted to the personnel of both state and federal agencies who provided their time and advice in the preparation of this handbook.