

# Handbook of Florida Water Regulation: Florida Pesticide Law<sup>1</sup>

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## Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principle Federal and Florida laws that directly or indirectly relate to agriculture. This handbook should provide a basic overview of the many rights and responsibilities that farmers and farmland owners have under both Federal and Florida 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decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at anytime. Several details of cited laws are also left out due to space limitations.

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## 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 FIFRA and the FQPA.

## Who Enforces the FPL?

The FPL is administered and primarily enforced by the Florida Department of Agriculture and

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Consumer Services (DACS). Just like the EPA under FIFRA, under the 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 DACS and renewed annually.

### **What Are the Duties and Powers of DACS under the FPL?**

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

- Adoption of rules governing the procedures for pesticide registration and for review of data submitted by applicants for pesticide registration.
- Determine whether a pesticide should be registered, registered with conditions, or tested under field conditions in Florida.
- Refuse or revoke 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.
- Request the EPA to require registrants of pesticides to provide DACS with environmental test data generated in Florida or from simulations of Florida's environmental conditions.
- Request information from the EPA relating to the findings that the EPA based its registration determinations for pesticides registered in Florida.
- Enter 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 DACS access to these premises or carrier under this condition.
- Sample and test 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 DACS by the FPL, the Pesticide Review Council (PRC) advises the Commissioner of Agriculture regarding the sale, use, and registration of pesticides, and advises state government agencies on the activities related to their pesticide responsibilities.

The PRC consists of eleven members, appointed for a term of four years, representing DACS, DEP, DOH, FWC, the Institute of Food and Agricultural Services (IFAS) at the University of Florida, the pesticide industry, environmental groups, a hydrologist, a toxicologist, one of the WMDs, and the growers association.

### **What Are the Duties and Powers of the PRC under FPL?**

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

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

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

## 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.

The 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 the EPA, DACS has classified all pesticides, based on their active ingredient, as either "general-use pesticide" or "restricted-use pesticide."

### ***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***

The FPL restricts who may apply restricted-use pesticides to roughly the same three categories of applicators as FIFRA, only the 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 FIFRA Restricted-Use Pesticides section of FE588.

All EPA restricted-use pesticides are incorporated into the DACS list by reference. DACS 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.

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.

## What Are the Anti-Siphon Requirements

The 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 DACS.

## What Are the Penalties?

If any person, applicant, or licensee violates any provision of the FPL, DACS 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 DACS, without bond.

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

## What Is Exempted from the FPL?

Exemptions from the 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, please contact DACS.

## Source

Chapter 487, Florida Statutes, Sections 487.011 to 487.175

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