



Relationship Between EPA and State Lead Agencies Regarding Pesticide Regulation in the 2023 Farm Bill

***A joint proposal by the
National Association of State Departments of Agriculture (NASDA) and NPMA***

FIFRA

Under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), a pesticide manufacturer must obtain permission to market a pesticide by submitting a proposed label and supporting data to the U.S. Environmental Protection Agency (EPA), which will register the pesticide if it is efficacious, it will not cause unreasonable adverse effects on humans and the environment, and its label complies with the statute's misbranding prohibition. It is illegal to use a pesticide that has not been properly evaluated and approved by EPA and the state where the pesticide is being used in.

States as co-regulators

A State may regulate the sale and use of federally registered pesticides to the extent that regulation does not permit any sales or uses prohibited by FIFRA, § 136v(a), but "[s]uch State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under [FIFRA]," § 136v(b).

Regarding state and local authorities, FIFRA includes provisions requiring pesticide manufacturers to produce records for inspection "upon request of any officer or employee . . . of any State or political subdivision," § 136f(b); directing the EPA to cooperate with "any appropriate agency of any state or any political subdivision thereof . . . in securing uniformity of regulations," § 136t(b); and specifying that "[a] State" may regulate pesticide sale or use so long as such regulation does not permit a sale or use prohibited by the Act, § 136v(a). No specific authority is granted for regulation by political subdivisions. While Congress clearly intended that States, not political subdivisions regulate pesticide sale, distribution and use, courts have determined otherwise. Unless and until Congress clarifies the exclusive role of State lead agencies, courts have enabled political subdivisions to impose regulatory restrictions without scientific assessment, economic analysis, consideration of the rights of property owners to control pests, or responsibility of public health agencies to control disease vectors.

State lead agencies share responsibility to regulate intrastate pesticide sale and use, as well as to enforce federal regulations. Unfortunately, cooperation between EPA and the State lead agencies in developing regulatory proposals is at best *ad hoc*, but more often than not completely lacking. Although provisions exist under section 25 of FIFRA (7 U.S.C. 136w) for consultation between EPA and both the USDA and the Congressional Agriculture Committees, no such requirement exists to affirm a formal consultative role and/or coordination with State lead agencies during the development of regulations for which these State partners will ultimately be responsible to implement and enforce.

Position: NASDA and NPMA propose to codify the exclusive role of State lead agencies, not political subdivisions, as pesticide co-regulators and to ensure that the expertise these agencies possess is both valued and integrated through their formal role in the development of pre-publication drafts of EPA regulatory proposals and regulations in final form.