



## Federal Insecticide Fungicide and Rodenticide Act (FIFRA) State Preemption

The Federal Insecticide Fungicide and Rodenticide Act (FIFRA) provides for federal regulation of pesticide labeling, distribution, sale, and use and establishes stringent safety standards and oversight. All pesticides used in the United States must be registered by the Environmental Protection Agency (EPA). EPA-approved pesticides protect our food supply from pests and disease. They also protect people and pets from germs, viruses and disease-carrying pests such as mosquitoes. In addition, they protect waterways, trees, and wildlife from harmful invasive species.

Pesticides are also regulated by the states. Preemption, ensuring authority on a given issue is determined by a “higher” level of government on a given issue, is the mechanism by which this co-regulation runs smoothly, as issues are handled by the entity with greater technical and regulatory expertise. If a federal law and state law conflict, then the federal law has authority. For example, if there is a federal law stating “it is illegal to sell or use pesticide X,” and a state law says “it is legal to sell or use pesticide X,” then the state law is invalidated because it conflicts with the law of a higher level of government.

### Federal Policy Background

Since the 1970s, State lead agencies (SLAs) have worked with the EPA through cooperative agreements to administer and enforce FIFRA laws and support the development of scientifically based pesticide labels. In the 46 States with preemption, the SLA already works with the EPA on all pesticide usage, sale, and/or distribution. The handful of states without a pesticide preemption law allow individual localities to regulate pesticides differently, creating a patchwork of unequal protection for the food supply and citizens based on their zip code. Instances exist where local pesticide rules are issued based on emotion, not issued based on science, law, regulatory expertise, etc.

The House included language in the Agriculture Improvement Act of 2018 clarifying the EPA and SLAs as the exclusive regulatory entities responsible for the registration, sale and use of pesticides, however, it was ultimately not included in the 2018 Farm Bill.

### Congress Can Fix This

Legislation is needed to reinforce the intention of FIFRA that only the SLAs may act as coregulators with EPA, ensuring that the highly technical work of determining how pesticides are used is performed by those with the appropriate technical expertise. State level pesticide control officials are career employees with extensive scientific training and are therefore best situated to prevent pesticides from having adverse effects to the environment.

Codifying the role of States in regulating pesticides will serve to eliminate the confusion and negative consequences for agriculture, our food supply and public health that are associated with the varied local regulation of pesticides in states without preemption law.

The next Farm Bill should include language asserting EPA and SLAs as the exclusive regulatory entities responsible for the registration, sale and use of pesticides under FIFRA.



### About NAAA

The National Agricultural Aviation Association (NAAA) represents the interests of the 1,560 aerial application industry owner/operators and 2,028 non-operator agricultural pilots throughout the United States licensed as commercial applicators that use aircraft to enhance food, fiber and bio-energy production, protect forestry, and control health-threatening pests. Furthermore, through its affiliation with the National Agricultural Aviation Research & Education Fund (NAAREF), NAAA contributes to research and education programs aimed at enhancing the efficacy and safety of aerial application.

Contact Andrew D. Moore, NAAA’s Chief Executive Officer, at [admoore@agaviation.org](mailto:admoore@agaviation.org) or (202) 546-5722 with any questions regarding this issue, or any other related to the aerial application industry. Find more information at [agaviation.org](http://agaviation.org)

## Importance of the Aerial Application Industry

Aerial applicators **annually treat:**

- 127 million acres of cropland (28% of the treated commercial cropland nationwide)
- 5.1 million acres of forest land
- 7.9 million acres of pasture and rangeland
- 4.8 million acres for public health and mosquito control

Aerial application is often the **only tool** to:

- Expediently eradicate a pest before it destroys a crop.
- Treat crops on rolling hills or in fields with soil too wet for ground applications.

The aerial application industry represents **\$37 billion in value** to farmers, input suppliers, processors and agricultural transportation and storage industries.

Without the aerial application of pesticides, the US would see annual losses of:

- 1.69 billion bushels of corn
- 199 million bushels of wheat
- 548 million pounds of cotton
- 295 million bushels of soybeans
- 3.33 billion pounds of rice

The total area of cropland needed to replace the yield lost if aerial application was not available for corn, wheat, soybean, cotton, and rice production is **27.4 million acres**, an area roughly the size of Tennessee.

Aerial applicators seed 3.8 million acres of cover crops annually<sup>2</sup>, **sequestering over 2 million tons of CO<sub>2</sub>**. According to the EPA this would be the equivalent of removing approximately 412,000 cars with carbon-combustion engines from the roads each year.

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<sup>1</sup> National Agricultural Aviation Association. May 2019. “2019 NAAA Aerial Application Industry Survey: Operators.” [agaviation.org/2019-naaa-operator-survey](http://agaviation.org/2019-naaa-operator-survey)

<sup>2</sup> Dharmasena, S. 2020. “How Much is the Aerial Application Industry Worth in the United States?” Research presented at the 2020 Ag Aviation Expo, Savannah, GA. [agaviation.org/aat-expo-presentations](http://agaviation.org/aat-expo-presentations)