



Washington
State Department of
Agriculture

SFIREG Preemption Issue Topic and Survey Results

SFIREG

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Preemption Issue Topics



- Preemption Background
- Region 8 States Issue
- Survey and Results
- Work Going Forward

Preemption Issue Background



- Region 8 State Lead Agencies have brought the topic forward.
- State lead agencies for FIFRA have historically had state primacy for FIFRA, act as co-regulators with EPA.
- Preemption is the ability of one level of government to override laws of a lower level.
- In some states restrictions of pesticide uses are occurring at other jurisdictional levels such as city or county governments.

Preemption Issue Background



- This can cause issues for SLAs, applicators, pesticide industry, State Legislatures, local government, and even Congress.
- During the June Full SFIREG meeting, Region 8 state liaison reported on concerns for preemption as a SFIREG topic.
- Full SFIREG recommended that preemption be pursued as a national issue, a state team conducted a survey, reporting back to Full SFIREG, and producing a paper.

Preemption Survey Questions



- Questions were developed and a SFIREG Survey went out to States in November. 37 States Responded by December 7th.
1. Is the pesticide preemption topic of interest to your state lead agency?

Yes – 70% - 26 states

No – 30% - 11 states

Preemption Survey Questions



2. Does your state have a preemption law to address preemption and authority issues?

Yes - 73% - 27 states

No - 27 – 10 states

Preemption Survey Questions



3. If you have a preemption law, what type do you have:

- Allows local governments to restrict products applied within their municipality
 - None
- Allows local governments to require notification of commercial application / homeowner applications
 - 1 state
- Allows local governments to regulate commercial applicators (i.e.: regulate the use of the pesticide and enforce the label directions).
 - 1 state
- Other (note if one or more above is allowed or other authority not listed):
 - 14 states

Preemption Survey Questions



4. How did preemption get started in your state:

- State legislature - 89 % - 16 States
- County change - 0%
- City change – 5.5% - 1 State
- Lawsuits – 0%
- Ballot initiative - 0%
- Agency cooperation to allow preemption – 0%
- Grassroots Environmental groups / public challenges for more regulations – 5.5% - 1 State

Preemption Survey Questions



5. What was the reason for the localized concern for preemption by another group:

- drift and damage – 10% - 2 states
- human health – 20% - 4 States
- environmental issues – 0%
- city or county control issues - 10% - 2 States
- Desire to be more restrictive than current state law or approach to regulations
 - 30% - 6 States
- other (comment) 30% - A variety of States

Preemption Survey Questions



6. If there is local preemption, does the preemption have their own set of restrictions that are counter to SLA FIFRA laws and rules:

Yes – 0%

No – 100% - 15 states

Preemption Survey Questions



7. What complications does the local preemption issue cause for your agency or the state (choose as many as needed to describe the situation)? – State Response:

- Certification and Training – 3
- C&T compliance issues with EPA – 2
- Licensing – 3
- Impacts in test taking – 1
- Registration and labeling issues – 2
- Enforcement – 9
- Drift problems – 2
- Worker Protection -1
- Surface Water Quality, Ground Water Quality, Public Drinking Water Systems, Endangered Species, Pollinators Protection Plans, School IPM – 0
- Restrictions beyond state laws and rules - 7

Preemption Survey Questions



7. What complications does the local preemption issue cause for your agency or the state? - State Response:

- Legislative and Policy issues – 6
- Confusion within the applicator community -8
- Variation in applicator compliance requirements -5
- Impacts to industry sectors -6
- Increased violations by applicators – 3
- Increased expense to state – 5
- If an increase in expense, why:
 - other Increased calls to enforce local ordinances – 2
 - Increased complaint calls, Increased expenses to research and communicate about impacts local ordinances will have on the state agency and regulated community - 0, Other – some written comments provided

Preemption Survey Questions



8. Are there pressures in your state to politically and legislatively to change or restrict preemption:

Yes - 35% - 7 states

No - 65% - 13 states

Preemption Survey Questions



9. Are there suggestions and recommendations for SFIREG to work on Preemption with other organizations, you region, your state, NASDA, Pesticide Association, Pesticide Industry, and Congress.

Yes - 41% - 12 states

No - 59% - 17 states

Preemption Survey Questions



10. Is your State considering any preemption legislation?

Yes - 0 states

No – 11 states

Preemption Survey SLA Recommendations



- There needs to be some sort of plan or guidance for states to follow if this issue comes up in their state.
- Development of a document addressing both pros and cons regarding preemption at the county, and city level including impact to SLA and on EPA funding to states.
- Recommend AAPCO and SFIREG draft some model statutory language that states can use as a guide if they need ideas on how to craft their own state language.

Preemption Survey SLA Recommendations



- Suggest collaboration with State, EPA Regional Offices, industry groups/associations and Congress.
- SFIREG should develop a plan and keep states informed on a plan in addressing this challenge.
- SFIREG to coordinate with states on approaches and some common sense pre-emption language that other states could use, it would be good to share. It would also be nice to find out what issues other states have dealt with related to pre-emption laws or lack there of.

Conclusions



- Survey was an important step for determining status
- Questions revealed some of the issues
- SFIREG can put together a comprehensive Issue Paper and summary
- SFIREG could potentially host a preemption webinar in February with state and other speakers, a panel, and a working session to develop workable outcomes
- SFIREG can make recommendations to the AAPCO Board for support in moving preemption issues and solutions forward



Questions?

Contact



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