

H.861: An Act Relating to Regulation of Treated Article Pesticides Overview and Section by Section Summary

Federal Regulation of Pesticides--Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

- FIFRA provides federal requirements for the distribution, sale, and use of pesticides.
- Under 7 U.S.C. § 136a, no person in any state may distribute or sell any pesticide that is not registered under FIFRA with the U.S. Environmental Protection Agency (EPA).
- Under FIFRA, EPA may restrict or prohibit the use of a pesticide, provide on its label how a pesticide should be applied, or issue a stop sale for violation. (7 U.S.C. § 136a(c) and (d); § 136k).
- EPA is authorized to exempt by rule pesticides of a character that is unnecessary for regulation under FIFRA. (See 7 U.S.C. § 136w(b)). One FIFRA exemption is for treated articles.
- A “treated article” is a substance treated with, or containing, a pesticide to protect the article or substance itself. A product treated against fungus to protect the product is a “treated article”
- The manufacture of a treated article—i.e. the application of the pesticide to the product—is regulated under FIFRA in the state where the pesticide is applied.

State Regulation of Pesticides

- FIFRA authorizes states to regulate sale or use of any registered pesticide in the state, except that:
 - State cannot allow sale or use prohibited by FIFRA; and States cannot adopt labeling or packaging requirements in addition to, or different from, FIFRA.
- The Agency of Agriculture, Food and Markets (AAFM) is authorized to regulate the sale, use, storage, treatment, and disposal of economic poisons—a.k.a. pesticides—in order to promote public health, safety, and welfare and protect agricultural and natural resources. 6 V.S.A. § 1103.
- AAFM has authority to regulate pesticides in the State, including: issuing licenses, permits and certificates; and regulating the display, sale, application, use, storage, treatment and disposal of pesticides that are deemed toxic or hazardous to man, animals, or the natural environment.

Treated Article Regulation in Vermont

- Because Vermont’s pesticide rules are based on FIFRA and apply to FIFRA regulated pesticides, AAFM lacks authority under the rules over treated articles imported into or used in the State.
- Consequently, treated articles imported into or used in the State are not subject to regulation under AAFM’s pesticide program or the AAFM authority to manage waste pesticides.
- Similarly, when a treated article poses a public health or environmental risk, AAFM lacks authority to require remedial action or prohibit the use—authority AAFM would have for other pesticides.
- Other State agencies might have some authority to regulate an issue posed by a treated article—e.g. ANR for release of a hazardous material or Department of Health for public health hazard.

H. 861 as Passed by House

- The House Proposal of Amendment inserted treated articles under the Agency of Agriculture's authority to regulate the use of all pesticides.

H. 861. Senate Proposal of Amendment-- Section by Section Summary

- Instead of giving the AAFM, the same authority over treated articles as it has over pesticides, the Senate Agriculture Committee proposes providing AAFM with specific authority to regulate treated articles based on recommendations of the expert Pesticide Advisory Council, when the treated article is hazardous, deleterious to the environment, likely to present a threat to human health, or is dangerous..

Section 1. 6 V.S.A. § 1101.

- Adds a definition of “treated article” that references the federal definition under 40 C.F.R. § 152.25(a).

Section 2. 6 V.S.A. § 1102. Pesticide Advisory Council (PAC)

- § 1102(d)(7): Authorizes the PAC to recommend to AAFM policies, proposed rules, or legislation for the regulation of the use of treated articles when PAC determines the treated article is hazardous or deleterious to the environment, likely to present a threat to human health, or is dangerous.

Section 3. 6 V.S.A. § 1105a. Powers of Secretary Over Treated Articles

- Allows AAFM, when recommended by the PAC, to adopt rules for a treated article that has a hazardous or deleterious effect on the environment, presents a likely risk to human health, or is dangerous.
- The rules may address:
 - §1105a(a)(1): BMPs, standards, procedures or requirements for sale, use, storage, or disposal of treated articles.
 - §1105a(a)(2): requirements for response or corrective actions for contamination or exigent circumstances from a treated article that presents a threat to human health or the environment.
 - §1105a(a)(3): requirements for examination or inspection of treated article.
 - §1105a(a)(4): requirements for persons selling treated articles to keep records of sale of articles.
 - §1105a(a)(5): requirements for reporting of incidents resulting from accidental contamination or misuse of treated articles.
- § 1105a(b): Prior to filing a rule for a treated article, AAFM submit a draft to the legislature for review.

Section 4. 6 V.S.A. § 1104(3)

- Replaces an outdated a reference to “unwise” pesticide use under the AAFM’s pesticide authority.
- Replaces unwise use with “presents a likely risk to human health”

Section 5. Consistency with Treated Article Regulation

- To avoid duplicative regulation of treated articles, Section 5 provides that the AAFM shall not adopt requirements, BMPs, standards or other procedures for a treated article when and to the extent that another state agency, board or instrumentality has adopted a requirement for that treated article.

Section 6. Effective Date The act takes effect July 1, 2016.