

January 5, 2026

Rep. Trevor Squirrell
Chair, Legislative Committee on Administrative Rules
Vermont State House
115 State Street
Montpelier, VT 05633

Re: Final Proposed Rule for Best Management Practices for the Use of Neonicotinoid Treated Articles Seeds and Neonicotinoid Pesticides Defies Legislative Intent.

Dear Chair Squirrell and Members of the Legislative Committee on Administrative Rules,

The undersigned organizations submit the following regarding the Final Proposed Rule of the Best Management Practices for the Use of Neonicotinoid Treated Article Seeds and Neonicotinoid Pesticides (“Final Rule”) proposed by the Vermont Agency of Agriculture, Food & Markets (“AAFM” or “Agency”) as required under Act 182 (H. 706 (2024)), an act relating to banning the use of neonicotinoid pesticides. Act 182 prohibits the application of neonicotinoid pesticides (“neonics”) to many crops and ornamental plants effective July 1, 2025, except pursuant to an exemption granted by AAFM, and also bars the sale, use, or distribution of most neonic treated article seeds,¹ effective January 1, 2029, except pursuant to an exemption.

Act 182 was passed twice by both chambers of the Vermont Legislature, initially 112-29 in the House and 25-2 in the Senate, and then, to override the veto by the Governor, the House voted 114-31 and Senate voted 20-9. Despite this strong vote showing support for pollinator protection, the Final Rule is incomplete and undermines the intent of the Act to protect pollinators.

Specifically, by making the BMPs purely voluntary and by flatly ignoring the clear legislative directive to develop objective thresholds and criteria for when AAFM may grant exemptions to Act 182’s neonic prohibitions, the Final Rule runs contrary to the intent of the Vermont Legislature as defined under 3 V.S.A. § 842(b)(2). Indeed, by not providing mandatory practices and standards for neonic use envisioned by the Legislature, we respectfully request that the Legislative Committee on Administrative Rules (“LCAR”) object to the Final Rule.

Background on Act 182

The intent of Act 182 is plain from its title — “An act relating to banning the use of neonicotinoid pesticides.” Based on legislative findings that many pollinator species in Vermont “are in decline or have disappeared,”² and that extensive scientific research links neonics to pollinator declines — including loss of bird biodiversity — as well as widespread human exposure,³ the law prohibits most outdoor neonic use in order to provide maximum protection to pollinators and Vermonters’ health.

¹ “No person shall sell, offer for sale or use, distribute, or use any neonicotinoid treated article seed for soybeans or for any crop in the cereal grains crop group (crop groups 15, 15-22, 16, and 16-22).” 6 V.S.A. § 1105b(a).

² Act 182, Sec. 1 Findings (2).

³ Act 182, Sec 1 Findings (6), (7), and (8).

The law also clarifies the duty on AAFM to establish BMPs for neonic treated seeds, making those BMPs a critical component of the law’s implementation. In 2016, the Legislature empowered AAFM to regulate any “treated articles”—i.e., items treated with pesticides before sale, including seeds—providing that AAFM “*may* adopt by rule” BMPs or other requirements.⁴ In 2022, the Legislature added a separate and specific mandate that AAFM “*shall* adopt by rule BMPs” for use of seeds treated with neonics, including the “establishment of threshold levels of pest pressure required prior to use” and a “criteria for a system of approval” of such treated article seeds.⁵

Act 182 incorporates this mandatory rulemaking into its statutory scheme to ensure protection and neonic use reduction in the limited circumstances where a neonic ban does not, or does not yet, apply to a particular use—specifically: (1) before the ban on the use of neonic treated seeds goes into effect in January 2029; (2) if an exemption from the ban on the use of neonic treated seeds or the application of neonics is granted by the Agency; and, (3) for the limited uses that are not prohibited under the Act.⁶ This mandatory rulemaking completes Act 182’s maximally protective legislative scheme, providing for neonic reductions outside of the prohibitions, and ensuring objective standards for the granting of exemptions to prevent those exemptions from swallowing the rule.

The Final Rule Undermines the Legislative Intent of Act 182

AAFM’s Final Rule undermines the intent of this Legislature to safeguard pollinators and Vermonters against harmful and unnecessary neonic use in two key ways: (1) the BMPs are purely voluntary, providing no required protections or practices to minimize neonic use for situations outside the law’s specific bans; and (2) it flatly ignores the legislative command to establish objective criteria for granting exemptions. Taken as a whole, the voluntary and incomplete BMPs fail to establish the maximum protection against wasteful neonic use that the Legislature intended and would allow the AAFM to effectively eliminate the law’s prohibitions on neonic use one exemption order at a time.

In making all the BMPs in the Final Rule merely “recommendations instead of enforceable requirements,” AAFM states that the law “does not direct or even authorize” the agency to adopt required practices because the term “BMP” in its “ordinary plain meaning” is not a term that “the legislature generally uses to compel mandatory rules”—supporting this argument by noting that “the legislature used the term ‘BMP’ separately and distinctly from the word ‘requirements’ in its applicable rulemaking authorization.”⁷ This reading misunderstands existing law and the legislative history regarding AAFM’s authority over treated articles.

Outside of 6 V.S.A. § 1105a, there are only two instances in Vermont’s Agriculture title where AAFM is explicitly empowered or directed to adopt BMPs—one where the statute is explicit that

⁴ 2016 Vermont Laws No. 99 (H. 861); 6 V.S.A. § 1105a(a) (emphasis added).

⁵ 2022 Vermont Laws No. 145 (H. 626), 6 V.S.A. § 1105a(c)(emphasis added).

⁶ 6 V.S.A. § 1105a(c)(1).

⁷ AAFM, *Best Management Practices for the Use of Neonicotinoid Treated Article Seeds and Neonicotinoid Pesticides: Public Comment Response Summary*, pg. 2.

BMPs are “voluntary” and informational⁸ and the other where BMPs are required practices that AAFM may impose at its discretion.⁹ Accordingly, whether BMPs are required practices or purely voluntary depends on the legislative language and context.

Act 182’s context and language make clear that BMPs are to be mandatory. In 2016, the Legislature authorized AAFM to regulate the broad category of “treated articles” (i.e., any object treated with any pesticide) through “BMPs” or other “standards, procedures, and requirements.”¹⁰ While this provision grants permissive authority to require mandatory practices for pesticide treated seeds, the Legislature later added a separate provision that AAFM “shall adopt *by rule* BMPs” specifically for seeds treated with neonics and other neonic uses,¹¹ underscoring the mandatory nature of the BMPs. Vermont law defines a “rule” as an “agency statement of general applicability that implements, interprets, or prescribes law or policy.”¹² Here, the intent of Act 182’s specific rulemaking mandate is clearly to “implement” or “prescribe” required protections for pollinators from the use of neonic-treated article seed and other uses.¹³

Put simply, Act 182 directs AAFM to use its existing authority over treated articles and other pesticide uses to develop *rules* for neonic use where not otherwise banned. Indeed, the very notion of a mandated rulemaking to create purely voluntary best practices as suggestions seems preposterous on its face.¹⁴

Perhaps most glaringly, the Final Rule also wholly ignores the statutory mandate that the BMP rulemaking address “threshold levels of pest pressure required prior to use of neonic treated article seeds or neonicotinoid pesticides” as well as “criteria for a system of approval” of such seeds or pesticides.¹⁵ AAFM argues that the term “address” does not require AAFM to actually create objective generally applicable rules for implementing the exemption provisions of Act 182, but represents only “a list of factors to consider when developing rules with the [Agricultural Innovation Board].”¹⁶ In other words, AAFM maintains that it can omit from the rulemaking factors that the Legislature required it to address, provided that it merely thinks about them first. This reading of the law is clearly contrary to the Legislature’s intent.

AAFM’s reading of the law not only fails to provide intended protection to pollinators and people in situations where neonic bans do not (or not yet) apply, but could also effectively nullify those statutory protections in practice. Act 182 provides AAFM with authority to grant

⁸ Regarding non-agricultural settings, the Legislature directed AAFM to “produce information for distribution to the general public” regarding “voluntary best management practices for the use of fertilizers” and BMPs “for residential sources of phosphorus.” 6 V.S.A. § 370(b)(1).

⁹ AAFM is empowered to require mandatory “best management practices” on a case-by-case basis over and above generally applicable required agricultural practices in order to protect basin water quality. 6 V.S.A. § 4813.

¹⁰ 6 V.S.A. § 1105a(a).

¹¹ 6 V.S.A. § 1105a(c)(1) (emphasis added).

¹² 3 V.S.A. § 801(b)(9).

¹³ See 6 V.S.A. § 1105a(c)(2).

¹⁴ AAFM’s argument that it cannot adopt mandatory rules for neonic use because they would be inconsistent with Agricultural Innovation Board (AIB) recommendations is likewise preposterous. The requirement that AAFM develop rules “after consultation with” the AIB, does not bind AAFM to the AIB’s recommendations.

¹⁵ 6 V.S.A. § 1105a(c)(2)(A), (G).

¹⁶ AAFM Public Comment Response Summary at 30.

case by case exemptions to the prohibitions on use of neonic treated article seeds and other neonic uses.¹⁷ While each exemption provision provides conditions necessary for AAFM to grant exemptions, the agency's discretion is still fairly broad. Act 182's rulemaking mandate to develop thresholds and criteria for granting these exemptions is clearly intended not only to employ the agency's technical expertise as to when such exemptions might be appropriate, but also to ensure that those criteria are objective, science-based, and generally applicable.

Without such rules, the AAFM could subvert Act 182's protections through the exemption process. For example, to obtain an exemption for neonic treated article seeds a person must complete an integrated pest management training course and provide a pest risk assessment report to AAFM.¹⁸ However, without the thresholds and criteria the Legislature directed AAFM to provide by rule, there is no standard as to when a pest risk assessment shows sufficient risk to warrant an exemption—allowing AAFM to grant an exemption for any reason, or perhaps no reason at all.

While Commenters are sympathetic to the fact that additional research is underway on Vermont-specific conditions that may inform such thresholds and criteria, to simply ignore the legislative mandate to establish them and deem the Final Rule complete and satisfactory contradicts the Legislature's intent and undermines the heart of the law.

Conclusion

For the foregoing reasons, we ask that LCAR object to the Final Proposed Rule of the Best Management Practices for the Use of Neonicotinoid Treated Article Seeds and Neonicotinoid Pesticides as proposed by AAFM as it is contrary to the intent of the Vermont Legislature under 3 V.S.A. § 842(b)(2).

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¹⁷ 6 V.S.A. §§ 1105b(b), 1105c(b).

¹⁸ 6 V.S.A. § 1105b(b).