

# Q&A

## Steven M. Dalton & Melissa V. Skrocki

**Q** My product contains a pesticide. Do I have to register it as a pesticide with the Environmental Protection Agency ("EPA") under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA")?

**A** A product that contains or is treated with a pesticide must be registered with the EPA if a claim is made that the product controls germs or pathogens. Registration is not required, however, if the product qualifies for the "treated articles exemption". This exemption applies where a pesticide is incorporated to safeguard the product and the merchandise is marketed such that the limited purpose of the pesticide is clear to the consumer. Treated products that are advertised as having broader public health benefits do not qualify for the exemption.

Given today's competitive marketplace, companies may look to market goods as having benefits extending beyond their traditional scope and purpose. The EPA actively enforces FIFRA against manufacturers and distributors who market pesticide-treated products. Companies should carefully consider FIFRA requirements in the context of existing marketing materials and prior to the commencement of marketing or distribution campaigns, when making contractual representations, and when contemplating acquisition of assets or other entities.



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