

## § 152.8

## 40 CFR Ch. I (7–1–06 Edition)

product bearing the claim was introduced into commercial agronomic use, and before the effective date of this rule.

(6) A product that meets all of the criteria of this paragraph with respect to one State is not thereby excluded from FIFRA regulation if distributed and sold in another State whose nitrogen stabilization statement requirement does not meet the requirements of paragraph (b)(5)(ii) of this section.

(c) *Human drugs.* Fungi, bacteria, viruses or other microorganisms in or on living man are not “pests” as defined in section 2(t) of FIFRA. Products intended and labeled for use against such organisms are human drugs subject to regulation by the FDA under the FFDCA.

(d) *Animal drugs.* (1) Fungi, viruses, bacteria or other microorganisms on or in living animals are not “pests” under section 2(t) of FIFRA. Products intended for use against such organisms are “animal drugs” regulated by the FDA under the FFDCA.

(2) A “new animal drug” as defined in section 201(w) of the FFDCA, or an animal drug that FDA has determined is not a “new animal drug” is not a pesticide under section 2(u) of FIFRA. Animal drugs are regulated by the FDA under the FFDCA.

(e) *Animal feeds.* An animal feed containing a new animal drug is not a pesticide under section 2(u) of FIFRA. An animal feed containing a new animal drug is subject to regulation by the FDA under the FFDCA.

(f) *Vitamin hormone products.* A product consisting of a mixture of plant hormones, plant nutrients, inoculants, or soil amendments is not a “plant regulator” under section 2(v) of FIFRA, provided it meets the following criteria:

(1) The product, in the undiluted package concentration at which it is distributed or sold, meets the criteria of §156.62 of this chapter for Toxicity Category III or IV; and

(2) The product is not intended for use on food crop sites, and is labeled accordingly.

(g) *Products intended to aid the growth of desirable plants.* A product of any of the following types, intended only to aid the growth of desirable plants, is

not a “plant regulator” under section 2(v) of FIFRA, and therefore is not a pesticide:

(1) A plant nutrient product, consisting of one or more macronutrients or micronutrient trace elements necessary to normal growth of plants and in a form readily usable by plants.

(2) A plant inoculant product consisting of microorganisms to be applied to the plant or soil for the purpose of enhancing the availability or uptake of plant nutrients through the root system.

(3) A soil amendment product containing a substance or substances intended for the purpose of improving soil characteristics favorable for plant growth.

[66 FR 64763, Dec. 14, 2001]

### § 152.8 Products that are not pesticides because they are not for use against pests.

A substance or article is not a pesticide, because it is not intended for use against “pests” as defined in §152.5, if it is:

(a) A fertilizer product not containing a pesticide.

(b) A product intended to force bees from hives for the collection of honey crops.

[53 FR 15975, May 4, 1988, as amended at 66 FR 64764, Dec. 14, 2001]

### § 152.10 Products that are not pesticides because they are not deemed to be used for a pesticidal effect.

A product that is not intended to prevent, destroy, repel, or mitigate a pest, or to defoliate, desiccate or regulate the growth of plants, is not considered to be a pesticide. The following types of products or articles are not considered to be pesticides unless a pesticidal claim is made on their labeling or in connection with their sale and distribution:

(a) Deodorizers, bleaches, and cleaning agents;

(b) Products not containing toxicants, intended only to attract pests for survey or detection purposes, and labeled accordingly;

(c) Products that are intended to exclude pests only by providing a physical barrier against pest access, and

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which contain no toxicants, such as certain pruning paints to trees.

### § 152.15 Pesticide products required to be registered.

No person may distribute or sell any pesticide product that is not registered under the Act, except as provided in §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, *i.e.*, use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

(a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):

(1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or

(2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or

(b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or

(c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

### Subpart B—Exemptions

SOURCE: 53 FR 15977, May 4, 1988, unless otherwise noted.

### § 152.20 Exemptions for pesticides regulated by another Federal agency.

The pesticides or classes of pesticide listed in this section are exempt from all requirements of FIFRA. The Agency has determined, in accordance with FIFRA sec. 25(b)(1), that they are adequately regulated by another Federal agency.

(a) *Certain biological control agents.* (1) Except as provided by paragraphs (a)(3)

and (a)(4) of this section, all biological control agents are exempt from FIFRA requirements.

(2) If the Agency determines that an individual biological control agent or class of biological control agents is no longer adequately regulated by another Federal agency, and that it should not otherwise be exempted from the requirements of FIFRA, the Agency will revoke this exemption by amending paragraph (a)(3) of this section.

(3) The following biological control agents are not exempt from FIFRA requirements:

(i) Eucaryotic microorganisms, including protozoa, algae and fungi;

(ii) Procaryotic microorganisms, including bacteria; and

(iii) Viruses.

(4) All living plants intended for use as biological control agents are exempt from the requirements of FIFRA. However, plant-incorporated protectants are not exempt pursuant to this section. Regulations, including exemptions, for plant-incorporated protectants are addressed in part 174 of this chapter.

(b) *Non-liquid chemical sterilants.* A non-liquid chemical sterilant, except ethylene oxide, that meets the criteria of § 152.6(a)(2) with respect to its claims and § 152.6(a)(3) with respect to its use sites is exempted from regulation under FIFRA.

[53 FR 15977, May 4, 1988, as amended at 66 FR 37814, July 19, 2001; 66 FR 64764, Dec. 14, 2001]

### § 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

The pesticides or classes of pesticides listed in this section have been determined to be of a character not requiring regulation under FIFRA, and are therefore exempt from all provisions of FIFRA when intended for use, and used, only in the manner specified.

(a) *Treated articles or substances.* An article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), if the pesticide is registered for such use.