

## § 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