

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Addition of Chitosan to List of Active Ingredients Allowed in
Exempted Minimum Risk Pesticides
DPR Regulation No. 25-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend Title 3, California Code of Regulations (3 CCR) section 6147(a)(5)(A). This proposal will affect pesticide regulatory program activities pertaining to pesticide registration. In summary, the proposed action will add chitosan to the list of active ingredients permitted in exempted pesticide products. This proposed action will mirror the U.S. Environmental Protection Agency's (U.S. EPA) recent action adding chitosan to Title 40, Code of Federal Regulations (40 CFR) section 152.25(f)(1) that was published in the Federal Register Vol. 87, No. 67364 on November 8, 2022.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than March 17, 2025. Comments regarding this proposed action may also be transmitted via SmartComment online comment portal at <<https://cdpr.commentinput.com?id=Kj4BMJr3H>> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does not affect small businesses. The proposed regulations will add chitosan to the list of active ingredients permitted in exempted pesticide products. Exempting pesticides that contain chitosan from the requirements of Food and Agricultural Code (FAC) Division 7 means that manufacturers, importers, and dealers of such products will no longer need to obtain a certificate of registration from DPR before selling the products for use in California, which will result in a savings in registration and renewal fees. In addition, such products will no longer be subject to other requirements of FAC Division 7, such as the payment of mill assessment on sales of the products.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight includes product evaluation and registration; statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in FAC Divisions 6 and 7.

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

Both U.S. EPA and DPR have regulatory authority over the registration, sale, and use of pesticide products in California. With certain limited exceptions that do not pertain to this regulatory action, pesticide products must be registered with U.S. EPA before being registered and authorized for sale in California.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes U.S. EPA to exempt certain products from pesticide registration if “the Administrator determines [the pesticide] either: (1) to be adequately regulated by another Federal agency; or (2) to be a of a character which is unnecessary to be subject to this Act in order to carry out the purposes of the Act.” (FIFRA 25(b), 7 U.S.C. § 136w(b).) Per this authority, the U.S. EPA has designated certain active ingredients as “minimum risk pesticides” because they pose little or no risk to human health or the environment. Pesticide products containing these active ingredients that meet the additional composition and labeling requirements specified in federal regulation are exempt from regulation under FIFRA. (See 40 CFR § 152.25.)

FAC section 12803 authorizes DPR, by regulation, to exempt from all or part of the requirements of FAC Division 7, a pesticide exempted pursuant to FIFRA section 25(b). For a substance to be exempt from FAC Division 7, including registration, the Director must individually evaluate each substance and concur with U.S. EPA’s exemption decision. In addition, the Director must exclude from the exempting regulation those specific requirements of FAC Division 7 that “may otherwise be applicable and that are necessary to protect the public health or the environment.” FAC section 12803 also states that “Notwithstanding any other provision of law, the Director shall retain authority to regulate any substance exempted pursuant to this section whether registered or not.” 3 CCR section 6147 lists pesticide products that are exempt from the requirements of FAC Division 7, including those “minimum risk pesticides” that U.S. EPA has determined pose little to no risk to human health or the environment.

In November 2022, U.S. EPA added chitosan to its list of active ingredients in 40 CFR section 152.25(f)(1) pursuant to FIFRA section 25(b). The U.S. EPA listing also includes chitosan salts that are only formed when chitosan is mixed with the acids listed as active or inert ingredients eligible for use in minimum risk pesticide products. Following U.S. EPA’s exemption decision, DPR evaluated chitosan and its salts to determine whether chitosan (including chitosan salts) should be added to the list of active ingredients permitted in exempted pesticide products pursuant to FAC section 12803. DPR concurs with U.S. EPA’s decision and DPR’s review of the current data supports the listing of chitosan and chitosan salts.

The proposed action will amend 3 CCR section 6147(a)(5)(A), adding chitosan to the list of active ingredients allowed in minimum risk pesticide products exempted from FAC Division 7, including registration. This listing will also include chitosan salts that are only formed when chitosan is mixed with the acids listed as active or inert ingredients eligible for use in minimum risk pesticide products.

The broad objective of the proposed action is to benefit the health and welfare of California residents, worker safety, and the State's environment by increasing alternatives to conventional pesticide products. Adding chitosan to the list of active ingredients will reduce regulatory burden on manufacturers who sell and distribute chitosan products in California. This may lead to increased production of chitosan pesticidal products. In turn, consumers may see lower costs for chitosan-based pesticidal products, and potentially a wider availability of these products.

During the process of developing these proposed regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposal will not interfere or otherwise impact other state agencies as DPR is the only agency that regulates pesticides within the State.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq. There are no other nondiscretionary costs or savings imposed upon local agencies that are expected to result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

DPR determined that the proposed regulatory action will have a negligible impact in net loss of income to DPR from registration and renewal fees, and mill assessment on sales of registered products. Currently, there is only one registered product containing chitosan that would be exempt from FAC Division 7, including registration, under the proposed regulatory action. The application processing fee for registration is \$1,500 and the annual renewal fee is \$2,300. The estimated net income loss from renewal fees would be around \$2,300 in the current year and \$2,300 in each subsequent Fiscal Year. The expected impact on DPR's overall mill assessment fee revenue will be negligible.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses: DPR determined the proposed regulatory action will not impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California. Exempting pesticides that contain chitosan from the requirements of FAC Division 7 means that manufacturers, importers, and dealers of such products will no longer need to obtain a certificate of registration from DPR before selling the products for use in California, which will result in a savings in registration and renewal fees. In addition, such products will no longer be subject to other requirements of FAC Division 7, such as the payment of mill assessment on sales of the products.

The proposed regulations will benefit the health and welfare of California residents, worker safety, and the State's environment by increasing alternatives to conventional pesticide products. Adding chitosan to the list of active ingredients will reduce regulatory burden on manufacturers who sell and distribute chitosan products in California. This may lead to increased production of chitosan pesticidal products. In turn, consumers may see lower costs for chitosan-based pesticidal products, and potentially a wider availability of these products.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC section 12803.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC section 12803.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR prepared an Initial Statement of Reasons and is making available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulation; and inquiries regarding the rulemaking file may be directed to:

Lauren Otani, Regulations Coordinator
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
916-445-5781

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following back-up person at the same address as noted below:

Jolynn Mahmoudi-Haeri, Senior Environmental Scientist (Supervisory)
Pesticide Registration Branch
916-324-3545

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.