

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

From: (Public Agency): _____

County Clerk

County of: _____

(Address)

Project Title: _____

Project Applicant: _____

Project Location - Specific:

Project Location - City: _____ Project Location - County: _____

Description of Nature, Purpose and Beneficiaries of Project:

Name of Public Agency Approving Project: _____

Name of Person or Agency Carrying Out Project: _____

Exempt Status: **(check one):**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: _____
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:

Lead Agency

Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: Jennifer Teerlink Date: _____ Title: _____

X Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

August 4, 2023

ATTACHMENT 1 TO NOTICE OF EXEMPTION

Section 18 Crisis Emergency Exemption

The California cotton industry is experiencing an unprecedented infestation of lygus caused by a combination of factors (historic excessive rainfall followed by warm temperatures, increases in weedy areas on nearby fallow land resulting from years of drought, etc.). The California Cotton Ginners and Growers Association (CCGGA) has requested use of Sefina Inscalis Insecticide (EPA Registration Number 7969-391, active ingredient: afidopyropen) to address an emergency condition in California to avoid significant economic loss to cotton growers. Specifically, CCGGA is requesting to increase the maximum allowable amount of Sefina Inscalis Insecticide that can be applied annually to cotton from 28 fluid ounces (fl. oz.) per acre per year, equivalent to 0.09 pounds (lbs.) afidopyropen, to 42 fl. oz. per acre per year, equivalent to 0.135 lbs afidopyropen, to effectively control *Lygus hesperus* (*Lygus*) and whitefly infestations in Merced, Madera, Fresno, Tulare, Kings, and Kern counties. This increase in the maximum annual application rate would allow growers to make a third application of Sefina Inscalis Insecticide to cotton to effectively control both *Lygus* and whitefly surges through the remaining portion of the cotton growing season, which will help mitigate further damage to California's cotton harvest.

Section 18 Crisis Emergency Exemptions

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 18 authorizes the United States Environmental Protection Agency (U.S. EPA) to allow an unregistered use of a pesticide (not registered or not registered for that particular use) for a limited time to address an emergency condition. The regulations governing Section 18 of FIFRA define an "emergency condition" as an urgent, non-routine situation that requires the use of a pesticide. (40 CFR § 166.3.) An emergency condition is deemed to exist when there are no effective registered pesticides available; there are no feasible alternative control practices; and the situation involves the introduction of a new pest, or will present significant risks to human health, threatened or endangered species, beneficial organisms, or the environment; or will cause significant economic loss. (*Id.*)

A Section 18 crisis exemption may only be issued when an unpredictable emergency condition exists and there is not sufficient time to a specific, quarantine, or public health exemption through normal means. The Department of Pesticide Regulation (DPR) must confer with, and receive verbal authorization from, U.S. EPA before issuance. U.S. EPA performs a preliminary review to ensure there are no concerns, and whether the appropriate safety findings required by the Food Quality Protection Act can be made. If authorized by U.S. EPA, DPR may issue a Section 18 crisis exemption allowing the use for up to 15 days. An applicant may follow up the crisis exemption with a specific, quarantine, or public health emergency exemption request. This allows the use to continue until U.S. EPA makes a decision on the corresponding exemption

requested. All uses under a Section 18 emergency exemption from registration require a restricted materials permit from the appropriate county agricultural commissioner before purchase and use.

CCGGA has applied for a Section 18 Crisis emergency exemption from registration to address the atypically severe and unprecedented population densities of *Lygus* populations experienced on cotton this year for which CCGGA submitted information demonstrating that there are no registered pesticide products sufficiently available to mitigate the concern. The production of specialty crops, such as cotton, require substantially more farm laborers than other crops. As a result, cotton producers prefer to use reduced risk pesticide products. However, the alternative currently registered reduced risk pesticides products are either not available for use after cotton blooms (early July), not effective for heavy infestations, and/or can create resistance management concerns. *Lygus* bugs are a key pest infesting the cotton production system in California and can threaten a cotton crop from earliest fruit set through flowering to final boll set. For the 2023 season, the *Lygus* populations found in cotton during initial fruit development have overwhelmed the ability of currently registered pesticide products to effectively control *Lygus* populations. Due to the immense continued pest pressure, currently registered pesticides are not able to provide adequate control of *Lygus* populations. Regular treatments with currently registered pesticides have had little effect mitigating crop damage and *Lygus* population densities continue to remain well above economic thresholds.

On August 4, 2023, U.S. EPA provided their concurrence for approval of a Section 18 Crisis Emergency Exemption for this project.

CEQA Statutory Exemption for Emergencies

The California Environmental Quality Act (CEQA) statutorily exempts “[s]pecific actions necessary to prevent or mitigate an emergency” from Division 13 of the Public Resources Code. (Cal. Pub. Res. Code § 21080(b)(4).) CEQA defines an emergency as a “sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.” (*Id.* § 21060.3.) The CEQA guidelines elaborate that “emergency projects . . . exempt from the requirements of CEQA” include “Specific actions necessary to prevent or mitigate an emergency.” (Title 14, Cal. Code Reg., § 15269(c).)

DPR has determined that the current *Lygus* infestation in cotton in Merced, Madera, Fresno, Tulare, Kings, and Kern counties is an action properly subject to the CEQA statutory exemption for emergencies. CCGGA estimates based on historic *lygus* events a loss of 22% of yield in 2023 from *lygus*. Based on these facts, the proposed project meets the CEQA emergency definition. The occurrence is sudden as the level of *lygus* on the crop rapidly increases to 20 times the typical action level. It is unexpected due to its unprecedented nature and the unanticipated confluence of causes. The occurrence involves a clear and imminent danger to property that demands immediate action, as evidenced by the significant potential crop yield losses. U.S. EPA also provided concurrence that this situation qualifies for a Section 18 crisis emergency exemption.

Human Health and Environmental Analysis

As discussed above, this project is exempt from environmental review under CEQA as an emergency project (Cal. Pub. Res. Code § 21080(b)(4); Title 14, Cal. Code Reg., § 15269(c)). However, in collaboration with U.S. EPA, DPR has conducted a preliminary analysis of potential human health and environmental effects resulting from an additional application and has not identified any concerns. The Section 18 emergency exemption includes significant limitations on scope and is subject to regulatory controls. The allowable use is limited to up to 15 days and is only approved for cotton to address a particular pest in 5 identified counties. Furthermore, Section 18 emergency exemptions can only be used by certified applicators or those under their supervision with a restricted materials permit issued by the county agricultural commissioner.

Human Health

U.S. EPA's April 2018 Human Health Risk Assessment for Section 3 Requests for a New Active ingredient evaluated other uses of afidopyropen with maximum annual application rates exceeding the requested 0.135 pounds active ingredient per acre per year and did not identify any human health risk estimates of concern.

Environment

The requested use on cotton does not result in any changes to the use sites, application methods, or increases to the maximum single application rate from the sites, application methods, and maximum single application rates on the currently accepted label. The Section 18 use instructions allow users to make one additional application of the product to control *Lygus* and whiteflies on cotton that does not result in any increases to the maximum single application rate or changes to the application methods. Based on the ecotoxicology data reviewed by DPR, repeated applications in accordance with the label are acceptable. Studies demonstrate afidopyropen residues quickly and steadily decline over time. Afidopyropen is not systemic and is not expected to accumulate in pollen or nectar.

ATTACHMENT 2 TO NOTICE OF EXEMPTION

From: [Bohnenblust, Eric](#)
To: [Teerlink, JT@CDPR](#)
Cc: [Bishop, Francie@CDPR](#); [Macedo, Tulio@CDPR](#); [Thai, Morgan@CDPR](#); [Gaines, Jennifer](#); [Wheeler, Maya \(she/her/hers\)](#); [estrada.fabiola](#)
Subject: CA Crisis Exemption for Use of Afidopyropen to Control Lygus on Cotton
Date: Friday, August 4, 2023 1:12:36 PM

EXTERNAL:

Hi Jennifer,

EPA has completed its review and concurs on your crisis exemption request for the use of afidopyropen to control lygus on cotton, which is effective for 15 days beginning August 4, 2023.

To complete your file, please send your final crisis declaration letter that includes the following:

1. Section 18 label/use directions
2. Effective use duration under the crisis exemption

If you have any questions, please call or email. Thanks.

Eric W. Bohnenblust, Ph.D, Chief
Minor Use and Emergency Response Branch (MUERB)
Registration Division
Phone: 202-566-2506
Email: Bohnenblust.eric@epa.gov