

comment on another potential change being considered for the emergency exemption program, *i.e.*, whether to allow exemptions for pest resistance management purposes.

EPA is considering these improvements to the emergency exemption program regulations in 40 CFR part 166 in an effort to reduce the burden to both applicants and EPA, allow for quicker decisions by the Agency, and facilitate pest resistance management, while maintaining health and safety requirements. EPA currently intends to publish a proposed rule in 2003 that will propose several potential improvements to the emergency exemption regulations. EPA will consider any available information from this pilot as it proceeds with rulemaking.

The potential revisions to the emergency exemption process described in this Notice arose from an effort to evaluate the emergency exemption regulations at 40 CFR part 166, begun in 1995. As part of that effort, in November 1996, the Agency hosted a Section 18 Stakeholders Workshop to discuss possible improvements to the Agency's emergency exemption process and receive stakeholder input. The improvements discussed at the workshop, and those included in this Notice, directly affect only applicants for emergency exemptions. States are the primary applicants for emergency exemptions, although Federal agencies may also apply.

Recommendations from the Association of American Pest Control Officials (AAPCO) Section 18 Task Force, representing the States, are the general basis for EPA's plan announced by this Notice. AAPCO originally provided EPA with recommendations following the 1996 workshop and recently submitted a revised, shortened list of three recommendations. This Notice begins to address those three recommendations. EPA has carefully refined each recommendation in an effort to address concerns expressed by other stakeholders. In refining those recommendations, the Agency attempted to maximize the streamlining benefits while making sure it can still carry out its health and safety responsibilities. A discussion of the evaluation process leading up to this Notice, including stakeholder input and recommendations, is in Unit IV.

After receiving comment on this Notice or near the end of the first year under the pilot, EPA plans to again consult the Pesticide Program Dialogue Committee (PPDC) on the potential improvements discussed in this Notice. At that time, the Agency, applicants for

emergency exemptions, and many others will be able to share and discuss their experiences concerning the pilot provisions. The diverse group of stakeholders represented at PPDC meetings provides an excellent source of feedback to the Agency. Input from the PPDC will be carefully considered, along with public comments received in response to this Notice, public comments on the proposed rule expected in 2003, and experience from the pilot, when deciding what will be included in the final rule.

The following is a summary of the statutory and regulatory framework of the Emergency Exemption Program, a description of the extensive stakeholder involvement that forms the basis for the limited pilot and this request for comment, a detailed description of the limited pilot, and the Agency's request for comment.

III. Existing Statutory and Regulatory Framework

A. Statutory Provisions--FIFRA Section 18

Section 18 of FIFRA gives the Administrator of EPA broad authority to exempt any Federal or State agency from any provision of FIFRA if the Administrator determines that emergency conditions exist which require such exemption.

B. Regulatory Provisions--40 CFR Part 166

Regulations governing such FIFRA section 18 emergency exemptions are codified in 40 CFR part 166. Generally, these regulations allow a Federal or State agency to apply for an exemption to allow a use of a pesticide that is not registered when such use is necessary to alleviate an emergency condition. A State, as defined by FIFRA section 2(aa), means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands and American Samoa. The regulations set forth information requirements, procedures, and standards for EPA's approval or denial of such exemptions.

Federal and State agencies may apply to EPA for a section 18 emergency exemption from FIFRA due to a public health emergency, a quarantine emergency, or a "specific" emergency. Most exemptions from FIFRA requested or granted under section 18 fall under the category of "specific exemptions." Typical justifications for specific exemptions include, but are not limited to, the expansion of the range of a pest; the cancellation or removal from the market of a previously registered and

effective pesticide product; and the development of resistance in pests to a registered product, or loss of efficacy of available products for any reason. Additionally, an emergency situation is generally considered to exist when no other viable (chemical or non-chemical) means of control exist, and where the emergency situation will cause significant economic losses to affected individuals if the exemption is not granted.

When a Federal or State agency applies to EPA under section 18, it must submit a request in writing that documents the emergency situation, the pesticide proposed for the use, the target pest, the crop, the rate and number of applications to be made, the geographical region where the pesticide would be applied, and a discussion of risks which may be posed to human health or to the environment as a result of the pesticide use (40 CFR 166.20). EPA conducts an expedited review of the request, verifying the existence of the emergency, assessing risks posed to human health through food, drinking water, and residential exposure, assessing risks posed to farmworkers and other handlers of the pesticide, assessing any adverse effects on non-target organisms (including Federally listed endangered species), and assessing the potential for contamination of ground water and surface water. If an application for the requested use has been made in previous years, EPA does an assessment of the progress toward registration for the use of the requested chemical on the requested crop, and considers this status in the final determination to grant or deny the exemption. If EPA concludes that the situation is an emergency, and that the use of the pesticide under the exemption will be consistent with the standards of the Food Quality Protection Act (FQPA) and 40 CFR part 166, then EPA may authorize the pesticide to be used under section 18.

Section 18 pesticide uses for specific and public health exemptions can be authorized for periods not to exceed 1 year; uses under quarantine exemptions can be authorized for up to 3 years. Since actions taken under section 18 are intended to address a time-specific crisis or emergency need for temporary relief, most section 18 exemptions are specific exemptions which are granted for just one growing season. Such actions should not, therefore, be viewed as an alternative to registering the use(s) needed for longer periods. If the situation addressed with the section 18 exemption persists, or is expected to persist, affected entities must take the proper steps to amend the existing