

D. Stakeholder Feedback and EPA Response Since Workshop and Initial Recommendations

Since the Section 18 Stakeholders Workshop in 1996 and receipt of the NASDA/AAPCO recommendations, EPA has worked closely with stakeholders to develop the best approach to address the recommendations. Adoption of any of the recommendations would primarily affect applicants for emergency exemptions. Because only States, U.S. territories, and Federal agencies can apply for emergency exemptions, EPA has had the rare opportunity to work very closely with a large percentage of the parties affected by a procedural change to gain valuable, ongoing feedback during the effort to develop the potential improvements discussed in this Notice.

After the initial NASDA/AAPCO recommendations were submitted, a workgroup consisting of EPA staff and several representatives of State agencies responsible for pesticide oversight met regularly to develop specific options to address each of the recommendations. During this time and subsequently, the Agency looked for ways to improve the process and further expedite decisions on requests. EPA reviewed the NASDA/AAPCO recommendations, and the options developed by the workgroup, to determine what could be accomplished through non-regulatory internal process improvements. These efforts paid off in repeatedly shortened average review times for emergency exemption requests.

Due to the significant improvements in the emergency exemption process and program during the several years following the original NASDA/AAPCO recommendations, the needs of the States changed. The AAPCO Section 18 Task Force has reviewed the past set of recommendations and recently provided updated, final State recommendations for improving the emergency exemption program (see Unit IV.E.). Each of the original eight recommendations has either been intentionally excluded by AAPCO in their final three recommendations, or is being addressed in this Notice. AAPCO's letter with the final recommendations acknowledged that, based on several years of experience with the section 18 process under FQPA, they no longer suggested that EPA pursue the other initial recommendations. The initial recommendations numbered 1, 4, and 7 (see Unit IV.B.) are addressed in this Notice. The second and third of the initial recommendations were designed to be implemented together, and were

essentially another option for the fourth, which AAPCO ultimately favored. EPA does encourage and help to coordinate regional emergency exemption requests involving multiple States, which was the fifth recommendation. Concerning recommendation number six, EPA is continuing to work with States to develop monitoring criteria for wildlife and endangered species in the context of pesticide registration. While the eighth recommendation, to allow exemptions based on reduced risk, has not been adopted, EPA does take reduced risk benefits into account as a factor in decisions.

EPA also solicited public comments on the original NASDA/AAPCO recommendations to improve the emergency exemption process, in the preamble to the proposed rule titled "Tolerances for Pesticide Emergency Exemptions" (64 FR 29823, June 3, 1999) (FRL-5750-1). The Agency only received comments on the listed recommendations from four parties. Two of the commenters were State departments of agriculture. Both States generally agreed with all the recommendations, but in particular supported the three revisions addressed in this Notice. One State offered refinements to several of the recommendations.

The other two commenters were public interest groups. Both groups opposed all of the recommendations. However, EPA believes that the operational revisions to the process being piloted have been refined in such a way as to address most of the concerns stated in their comments. One group noted that the current emergency exemption regulations are the result of negotiated rulemaking, a process which included a balanced representation of interests, but that the Section 18 Stakeholders Workshop, which culminated in the NASDA/AAPCO recommendations was not an adequately open process. EPA believes the workshop included participants from a wide array of interests, as representatives from State agencies responsible for pesticide oversight, chemical companies, and environmental and public interest groups attended. Also, the Agency's plan to undertake notice-and-comment rulemaking procedures before adopting any final changes to the section 18 process will again allow all interested parties to participate in the development of the potential changes.

In May 2002, EPA presented its general plan concerning the three revisions to the emergency exemption process included in this Notice to the PPDC. The PPDC provides a forum for

a diverse group of stakeholders to provide feedback to EPA on various pesticide regulatory, policy, and program implementation issues. A wide array of stakeholders provided comments at the May meeting, which EPA has considered in refining the pilot and proposed revisions in this Notice. A transcript of the presentation and discussion at the May PPDC meeting is in the public docket for this Notice.

E. Final Recommendations by AAPCO Section 18 Task Force

AAPCO provided EPA with their updated recommendations for improving the emergency exemption process:

1. Multi-year section 18 exemptions.

EPA should delegate authority to the States to reissue section 18 exemptions for a second or third year, based on the State's confirmation that the basis for an emergency situation continues to exist.

2. Resistance management.

EPA should support specific exemptions for pest resistance management where there is documented scientific evidence of resistance to currently registered pesticides or where valid research demonstrates that resistance is developing.

3. Criteria for significant economic loss.

EPA should base decisions on crop yield rather than crop value (or profit loss) in situations where crop yield is a better indicator of pest damage.

These are three of the eight recommendations originally submitted to the Agency in 1997. These updated recommendations were provided to EPA by AAPCO, verbally at the May 2002 PPDC meeting, and again in a letter in September 2002, from the president of AAPCO. A copy of that letter is available in the public docket for this Notice. The three potential revisions discussed in this Notice would essentially address these three recommendations, albeit with modifications based on input from other stakeholders. Each of the initial eight recommendations has either been dropped by AAPCO in their final recommendations, or is being addressed in this Notice.

V. Limited Pilot of Potential Process Improvements Beginning with the 2003 Growing Season

This limited pilot was developed after long and careful consideration of input by stakeholders. EPA believes that the changes being piloted will significantly benefit both applicants for pesticide emergency exemptions and the Agency. These benefits are expected to accrue without any increase in risk to human health or the environment. The pilot