

continuing emergency, the economic data and other supporting information required by 40 CFR part 166 would be unnecessary.

The limited focus of the pilot on reduced-risk pesticides will significantly reduce the number of exemptions potentially affected under the pilot. Nevertheless, the Agency expects the pilot to provide valuable experience. Any available information from the pilot will be considered along with public comments in forming a better proposed rule that EPA currently intends to issue in 2003 and aid in the development of final improvements to the emergency exemption program.

2. *Tiered approach for documentation of "significant economic loss"*—i. *What is our current practice?* EPA determines whether the loss from an emergency would result in net cash returns (gross revenue less operating expenses) below the historical variation in net cash returns. Applicants are required to submit economic information necessary to make this determination, when available. In addition to information used to estimate the amount of the anticipated yield and profit losses, annual data for 5 years of average yields, prices, and production costs are submitted by applicants and analyzed by EPA to establish profit variability.

ii. *How will the tiered approach to determining significant economic loss be used under the pilot?* A large majority of emergency exemptions are granted because they meet the regulatory criteria for an emergency condition that affected growers will suffer a "significant economic loss" due to an urgent, non-routine situation if the requested exemption is not granted. This second potential improvement that is part of the pilot will allow applicants to develop the significant economic loss documentation necessary to support many specific exemption requests through a less burdensome economic methodology.

This tiered approach is based on an analysis of data found in a random selection of past requests for emergency exemptions submitted by States, including requests that were denied. The analysis shows that in many cases significant economic loss can be demonstrated in a more flexible manner without loss of reliability. The analysis of past section 18 requests suggests that the current approach is often unnecessarily burdensome in terms of information requirements. This new approach under the pilot will often reduce the burden to applicants relative to the current approach, while maintaining the level of approvals of current regulations. The tiered approach

is intended to require less data from applicants in cases where the same conclusion of a significant economic loss would be made with the additional data and analysis.

Current regulations (40 CFR 166.20(b)) list certain information which must be included, as appropriate, in an application for a specific exemption:

(b) *Information required for a specific exemption.* An application for a specific exemption shall provide all of the following information, as appropriate, concerning the nature of the emergency:

(4) A discussion of the anticipated significant economic loss, together with data and other information supporting the discussion, which addresses all of the following:

(i) Historical net and gross revenues for the site;

(ii) The estimated net and gross revenues for the site without the use of the proposed pesticide; and

(iii) The estimated net and gross revenues for the site with use of the proposed pesticide.

The regulations state that all of the above information must be included "as appropriate." EPA exercises judgement based on experience, in determining when something less, or different, is appropriate. For example, under the current approach the Agency typically considers 5 years of annual data on historical net and gross revenues to be appropriate, although the regulations do not prescribe 5 years. However, in some cases, such as a very minor or new crop for which less data are available, this requirement is not considered appropriate if the applicant substitutes other credible information. Therefore, EPA believes that the pilot approach will allow applicants to focus their applications on the most "appropriate" information for determining whether or not a significant economic loss will occur.

Because the analysis of past exemption requests, on which the pilot approach is based, demonstrates that the likelihood of approval of some requests is not significantly changed by the pilot tiered approach, EPA believes that the requirement of those data in those cases is not appropriate. However, even when annual historical data are not required, applicants would generally continue to utilize historical data under the pilot approach, albeit in a different way. Each tier requires a quantitative threshold to be met, which is a certain percentage of a baseline of either crop yield, gross revenues, or net revenues. The best approach to determine the baseline in most cases is to use the average of historical data, including yield and price data.

Whereas the existing method generally requires detailed historical data, with the new approach the analytical burden for determining significant economic loss will be divided into three successive tiers. If the pest situation does not appear likely to result in a significant economic loss based on the first tier analysis, it could qualify based on further analysis in succeeding tiers. Each additional tier would require more data and involve more analysis on how the emergency affects profitability. For a loss to be considered economically significant, it must exceed a threshold. Each tier has a quantitative threshold that will generally apply to all eligible emergency exemption applications. Where conditions do not neatly fit into the tiered approach, for example long-term losses in orchard crops, the Agency may make a finding of significant economic loss based on other criteria, such as changes in the net present value of an orchard, if these losses are demonstrated by the State.

*Tier 1--Yield Loss.* Tier 1 is based on crop yield loss. If the projected yield loss due to the emergency condition is sufficiently large, EPA will conclude that a significant economic loss will occur, due to the magnitude of the expected revenue loss. The yield loss threshold in Tier 1 will be 20% for all crops. This threshold is set at a sufficiently high level such that a loss which exceeds the threshold will also meet the thresholds in Tiers 2 and 3, if the additional economic data were submitted and analyzed. Therefore, for such large yield losses it will not be appropriate or necessary to separately estimate economic loss, which requires detailed economic data.

*Tier 2--Economic Loss as a Percentage of Gross Revenues.* A yield loss which does not satisfy the threshold in Tier 1 could also lead to a significant economic loss because yield loss may not capture all economic losses. In addition to yield losses there may be other impacts that affect economic loss, including quality losses and changes in production costs, such as pest control costs and harvesting costs. For situations with yield losses that do not meet the significant economic loss criterion for Tier 1, EPA will evaluate estimates of economic loss as a percent of gross revenue in Tier 2, to determine if the loss meets that threshold for a significant economic loss. The economic loss threshold in Tier 2 will be 20% of gross revenue for all crops. Again, this threshold in Tier 2 is set with the intention that losses exceeding the threshold also meet the threshold in Tier 3, if it were analyzed.