

Tier 3--Economic Loss as a Percentage of Net Revenues. Because typical profit margins (net cash revenues as a percentage of gross revenues) vary among crops, EPA will consider impacts on net cash revenues in Tier 3 if neither yield or economic losses are above the required thresholds in Tiers 1 and 2. Specifically, Tier 3 will measure economic loss as a percent of net cash revenues. The loss threshold in Tier 3 will be 50% of net cash revenues for all crops during the pilot. Some emergency conditions which fall short of the thresholds in Tiers 1 and 2 may qualify as a significant economic loss in Tier 3, particularly for crops with narrow profit margins. Even if economic loss seems small in comparison to gross revenues, the situation could still be determined to be a significant economic loss if the profit margin is narrow.

For those emergency exemptions in which significant economic loss is a qualifying factor, applicants will determine which tier their situation is expected to qualify under, specify that tier in their request, and submit the data necessary for analysis under that tier. The three tiers are designed such that when an emergency condition qualifies for significant economic loss under a lower tier, data for higher tiers is not required, and the burden and cost are reduced. Each successive tier builds upon the previous one. That is, the information required for estimating a lower tier is also necessary in estimating each higher tier. This will allow an applicant to collect data, and build a case for significant economic loss, as needed and determined by the conditions.

iii. *Why pilot this potential improvement?* This new methodology for determining a significant economic loss is intended to streamline the data and analytical requirements for emergency exemption requests. In addition, the methodology is designed to be more flexible than the existing procedure for determining a significant economic loss. Specifically, the Agency believes this approach makes a better comparison between the emergency situation and what would exist without the emergency, rather than a comparison with the past. An analysis of past section 18 requests suggests that this new approach will not cause a significant change in the overall likelihood of a significant economic loss finding, although findings may differ in individual cases. Further, it is expected to lead to considerable savings to both applicants and EPA from reduced data and analytical burdens. Under the pilot procedure, applicants may elect to submit the minimum amount of data

necessary to demonstrate a significant economic loss in one of three increasingly refined tiers. If the first tier is sufficient, the burden is reduced most significantly. Even in the highest tier, the burden may be reduced relative to the old approach as the analysis focuses on the current year rather than historical data. Like re-certification of emergencies, this will save applicants time and resources in gathering data and preparing submissions. The Agency's burden will be reduced due to streamlined reviews.

As with re-certification of emergencies, the Agency expects the pilot to provide useful experience with the tiered approach for documentation of significant economic loss. That experience will be considered along with public comments to assist in the planned rulemaking process for improving the emergency exemption regulations. The Agency will analyze the selected threshold levels during the pilot period to confirm that they are appropriate, and also use any helpful information supplied in public comments. EPA will also scrutinize the approach of using a uniform threshold level in each tier for all crops, and consider whether different levels for various crop groups would be more appropriate.

VI. Request for Comment

A. Comment Sought on Improvements Being Piloted

The Agency seeks comment on the potential changes included in the limited pilot described in Unit V., and on how those provisions should be implemented through a future rulemaking. 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.

If the re-certification process is fully implemented through rulemaking, the eligibility criteria established in that rulemaking would become final, and may differ from the criteria under the pilot. The Agency expects that after such a final rule, whenever EPA granted an exemption, and classified it as a candidate for re-certification, it would also include in the approval letter the number of years of candidacy remaining at that time (*i.e.*, 1 or 2 years). This notification in the approval letter of candidacy for the following year will not occur during the pilot, as the criteria under the pilot are not final. Instead, EPA will prepare a list of candidate

exemptions (see Unit V.A.) for each year that the pilot is in effect.

The scope of the pilot is purposely limited to reduced-risk pesticides in order to significantly reduce the number of exemptions potentially affected, while still benefiting from the experience of the potential improvements to inform the rulemaking process. However, EPA does not anticipate that the improvements being piloted should be limited to reduced-risk pesticides in a final rule.

B. Comment Sought on Consideration of Resistance Management Exemptions

Although not included in the limited pilot described in this Notice, the Agency is considering another potential improvement to the emergency exemption program, *i.e.*, whether to allow exemptions for pest resistance management purposes. This potential improvement was not included in the pilot due to uncertainty and complexity of issues with respect to the appropriate requirements for scope and degree of resistance development, as well as level and type of documentation. To aid the Agency in developing this potential improvement for inclusion in the proposed rule that is currently expected in 2003, the Agency specifically seeks comment on this additional potential improvement to the emergency exemption program that would allow exemptions for resistance management under specific criteria where pest resistance to registered pesticides is developing or has developed.

1. *What is our current practice?* Exemptions are only authorized for resistance management in cases where documented pest resistance to the registered pesticide has already developed and use of the registered pesticide is expected to result in significant economic losses. Under current regulations, if there is at least one available registered pesticide that is effective enough to prevent significant economic losses, then the situation is generally not found to be an emergency regardless of whether or not the alternative is considered to be vulnerable to the development of resistance by the target pest.

2. *How might resistance management exemptions work?* Some emergencies are the result of the development of pest resistance to a registered pesticide that is essential for the management of a pest which, unchecked, can cause significant economic loss. The optimal time to respond to this emergency would be early enough to prevent or retard the development of widespread resistance. Timely action in granting the emergency use of another pesticide could increase