

resulting in severe crop devastation and significant economic impact to wheat and barley producers in these States. It is believed that the mild winters over the last several years have allowed grasshopper nymphs to survive the winter and multiply more rapidly in the spring, leading to population explosions of grasshoppers to levels of up to 60 grasshoppers per square foot in some cases. The Applicants state that materials registered for grasshopper control either are not effective with populations at the current levels, are toxic to beneficial insects, or provide insufficient residual control, given the outbreak levels of grasshopper infestation. Under the crisis provisions (40 CFR 166.40) of section 18 of FIFRA the Applicants used diflubenzuron on wheat and barley for control of grasshoppers.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of diflubenzuron in or on barley and wheat commodities. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2005, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on barley and wheat commodities after that date will not be unlawful, provided it is demonstrated pursuant to section 408(l)(5) that the residues are the result of the application or the use of a pesticide at a time and in a manner that was lawful under FIFRA, and the residues do not exceed levels that were authorized by these tolerances at the time of that application or use. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues they allow are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether diflubenzuron meets EPA's registration requirements for use on barley and wheat or whether permanent tolerances for these uses would be

appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of diflubenzuron by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any States other than Montana, Washington, and Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for diflubenzuron, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL-5754-7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of diflubenzuron and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for combined residues of diflubenzuron in or on wheat and barley grain at 0.05 ppm, wheat and barley straw at 0.50 ppm, wheat and barley hay at 1.0 ppm, wheat milled byproducts at 0.10 ppm, and aspirated grain fractions at 30 ppm.

EPA has received objections to a separate tolerance-setting involving the use of diflubenzuron on pears. These objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although that proceeding remains ongoing, EPA has considered whether it is appropriate to establish the emergency exemption tolerances for diflubenzuron on wheat and barley commodities while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised non-frivolous issues, and the

extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support establishing these tolerances at this time. First, the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. [NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA initiated a 60 day public comment period on them in the **Federal Register** on June 19, 2002 (67 FR 41628) (FRL-7167-7). That comment period was extended until October 16, 2002 in the **Federal Register** of September 17, 2002 (67 FR 58536) (FRL-7275-3),] and EPA is now examining the extensive comments received. Moreover, NRDC itself submitted further information to the Agency in June 2003, and the Agency is in the process of evaluating that information as well. Second, the nature of the current actions are extremely time-sensitive as they address emergency situations. Third, the issues raised by NRDC are not new matters but questions that already have been the subject of considerable evaluation by EPA and comment by stakeholders. Accordingly, EPA is proceeding with establishing these tolerances for diflubenzuron. EPA has determined at this time that these tolerances rest on a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residues involved. As suggested above, if during the life of these tolerances EPA determines that any experience with, scientific data on, or other relevant information on this pesticide indicates that the residues these tolerances allow are not safe, EPA will take action to revoke the tolerances prior to their otherwise applicable expiration date. The action EPA is taking at this time should not be construed to constitute action on NRDC's aforesaid objections. The Agency continues to consider those objections and information concerning them, including the new information which NRDC submitted in June 2003.

The most recent estimated aggregate risks resulting from the use of diflubenzuron, are discussed in the **Federal Register** of September 19, 2002 (67 FR 59017) (FRL-7200-4), final rule establishing tolerances for residues of diflubenzuron in/on grass forage, fodder, and hay; peppers; stone fruits; and tree nuts. In that prior action, risk was estimated using anticipated residue (AR) information based on field trial data and percent crop treated (PCT) information for some commodities. Available residue data indicate that the