
Section 18 Reforms Are On The Horizon

Section 18 of FIFRA gives the Environmental Protection Agency (EPA) authority to help states deal with agricultural pest emergencies. If an emergency situation is properly documented and approved by EPA, the state is allowed to use a pesticide for an unregistered use for a limited time to treat the problem. It's a powerful tool for situations that could spell crop disaster if not addressed immediately. And immediate is the key word. Each Section 18 application is a finely orchestrated cooperative effort between:

- Growers and/or commodity groups who identify the situations that registered pesticides will not alleviate,
- The state lead agricultural agency (usually the state department of agriculture), who submits the paperwork to EPA, and
- EPA who must perform a multi-disciplinary risk assessment within 50 days of receiving the request.

The risk assessment covers dietary, occupational, ecological and environmental risks and an assessment of the emergency. If approved, the unregistered use is good for a limited period of time and only for the emergency situation. The Section 18 process has successfully averted crop disasters and saved American agriculture billions of dollars over the years.

Section 18 has been on the books since 1973 and was revised in 1986. The Food Quality Protection Act (1996) added yet another step to the process by requiring that maximum allowable residue levels be set for all Section 18s - a step that had previously applied only to products in the final stage before registration.

Successful programs stay that way because they are flexible and able to change with the times. Through the years the number of requests for emergency exemptions has increased and turn around time at EPA has actually decreased. In 2001, EPA received 542 requests (407 in 1996) and reached decisions within an average of 34 days (53 days in 1996). Even though efficiency has increased at EPA, there was still the desire to streamline the regulation for the benefit of all stakeholders. Input has been solicited from state lead agencies, environmental and public interest groups, pesticide companies and academia. The discussions have resulted in three proposed reforms to Section 18: (1) renewable exemptions, (2) exemptions for resistance management, and (3) defining economic loss.

Renewable Exemptions

Currently, EPA authorizes Section 18s for no longer than one year. The new proposal would allow the Agency to "re-certify" the emergency situation for up to two years following initial authorization. A time-limited tolerance would be established for the three-year period. The first year, U.S. EPA would do a complete review of the requested exemption. Each renewal request would then be assessed by EPA for risk, validation of emergency claim and qualification criteria such as documented resistance to alternatives, lack of available alternate products, a new pest and/or documented loss

of efficacy of registered alternatives. Time and critical resources would be saved at both the national and state level because 70% of Section 18 requests are repeats.

Exemptions for Resistance Management

Currently, a Section 18 exemption can be authorized for resistance management only where there is documented pest resistance to the registered alternative and the resistance is expected to result in significant economic loss. The proposed reform allows exemptions for an alternative to be used in conjunction with the registered pesticide, where there is documented scientific evidence that resistance has or is developing even though the degree of resistance may not yet result in significant economic loss. Full criteria are being determined but will require that the requested pest control product must be a different chemical class or have a different mode of action from the currently registered pesticide(s).

Defining Economic Loss

All Section 18 requests must contain a determination of significant economic loss (SEL). The criteria currently used are based on normal profit variation over a typical period, usually 5 years, using production, price and cost data. Assembling these data becomes problematic in some cases because profits do not fluctuate the same for all crops (e.g., rain fed vs. irrigated crops), five year averages may be affected by the emergency condition especially if the Section 18 is a repeat request, and historical economic data may simply not be available for some specialty crops. The reform proposal is a tiered set of criteria to streamline the data requirements for determining SEL.

- **Tier 1: Yield Based Loss Determination-**
The presumption is that high yield losses lead to significant economic loss and no further economic data are required.
- **Tier 2: Economic Loss as a Percent of Gross Profits-**
A moderate yield loss could also lead to SEL. Because moderate yield loss may not capture all losses, Tier 2 factors price/quality effects and changes in pest control costs if the yield loss is not significant by itself.
- **Tier 3: Economic Loss as a Percent of Operating Profits-**
Because profit margins vary, EPA will also consider impacts on profit if revenue loss is not significant.

The tiered approach requires less data primarily where yield loss is large. Beyond yield estimates, additional economic data are only collected as needed if higher tier levels must be evaluated. Even going to higher tiers, much less historical data would be required. This reduces the burden on states and on the Agency for collecting and analyzing data.

A *Federal Register* Notice for public comment is due in summer, 2002. The proposed reforms will be implemented on an interim basis for the 2003 growing season with evaluation and revisions to follow.

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