

## MEMORANDUM

TO: Persons, Organizations and Companies Desiring to Petition for a Specific Exemption from Pesticide Registration

FR: Amy Bamber, Agricultural Sciences Division, Montana Department of Agriculture  
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RE: Emergency Exemption (Section 18 of FIFRA)

Section 18 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) gives the US Environmental Protection Agency (EPA) the authority to issue a specific exemption for a pesticide from certain registration requirements to control a pest problem under **emergency conditions**. An emergency means an **urgent, non-routine** situation that may be remedied through the use of a pesticide(s) and shall be deemed to exist when:

1. No effective, registered pesticides are available that have labeled uses for control of the pest.
2. No economically feasible alternative practices which provide adequate control are available.
3. The situation involves the introduction or dissemination of a pest new to or not previously known to be widely prevalent or distributed in the state or specific area.
4. It must be substantiated that this (new) pest or problem will cause a significant economic loss.

The term **significant economic loss** means a substantial reduction either in normally expected profitability for productive activities or in the value of public or private assets for the area affected by the emergency. The contribution of mismanagement to the loss will not be considered in determining loss.

In evaluating the significance of an economic loss for productive activities, the EPA will consider whether the reduction in profitability exceeds that which would be expected as a result of normal fluctuations over a number of years, and whether the loss would affect the long-term financial viability expected from the productive activity.

When the pesticide proposed for use will be used on a food or feed crop, a tolerance level must be established by the EPA before use. Sufficient information must be available about the proposed pesticide to demonstrate that it will be effective and provide sufficient toxicological and residue data to support a temporary tolerance.

A specific or emergency exemption must be applied for by a state or federal agency. In Montana, the Montana Department of Agriculture (MDA) is the responsible agency for making an application request to the EPA. After review of the application, the EPA approves or denies the request.

The MDA makes application for a specific exemption after receiving requests from individual producers and/or producer organizations that an emergency pest condition exists or can be expected to occur. The MDA proceeds with the application request when it has: 1) confirmed the emergency pest condition exists or can be expected, 2) determined there will be significant economic loss without control of the pest, 3) determined that no other registered pesticide is available or effective and 4) obtained cooperation of the pesticide registrant to support the application request.

A Section 18 request which does not include all the data required for a Section 18 application will not be accepted by EPA for review on the basis of being technically incomplete. Incomplete information results in a delay in the MDA submitting the Section 18 application or if submitted with insufficient information delays a determination from the EPA. Any additional information pertinent to the pest problem may help in obtaining a Section 18 exemption. Your cooperation in providing all necessary information is requested.

Also, please be aware that if and when a Section 18 Specific Exemption is granted, it is for a **specific use**, in a **specific area**, and for a **specific amount of time**. Further, EPA requires that a Use Report be submitted which requires that growers, crop consultants, extension agents, and chemical company representatives inform the state agency of the use, results, economic benefits, acres treated and similar benefits or comments concerning any problems surrounding the use of the exemption.

#### Fees

A registration fee of \$138.00 must be paid upon approval of the Section 18 exemption.

#### Procedures

The persons or organizations desiring the exemption should complete the information outlined below and submit it to the Montana Department of Agriculture. The Department prepares this information in final form and submits it to the EPA. EPA has specified certain requirements for data. Lacking these data, a request for an emergency exemption will not be considered. Because of the extensive data requirements, a coordinated effort by growers, commodity groups, companies and Montana State University Extension Specialists is essential.

Please complete all sections of the following:

Note that:

- Un-highlighted items are provided by MDA.
- **Items in bold type should be provided by the applicant (grower groups, crop specialist, university or private industry researchers, etc.).**
- *Items in Italic Type should be provided by the pesticide registrant.*

1. Type of Exemption

2. **Name, address and telephone number of petitioner.**

**a. This is generally a grower group or association or a substantial number of individual growers that grow the crop. In any case, a person should be identified as an informational contact.**

**b. Identify persons that have specific expertise on:**

**i. The crop/pest complex**

**ii. Economic information**

3. **Name and formulation of the pesticide proposed for use (provide an EPA registration number if there is one).**

3. **Description of Proposed Use:**

**a. The crop or site to be treated. Specify counties of use if use will not occur statewide.**

*b. Specify method of application: ground or aerial equipment or both or other specialized application equipment.*

*c. Specify the rate of pesticide application: amount of active ingredient and formulated product applied per acre.*

*d. Specify the maximum number of applications that may occur in a growing season.*

**e. Estimate the total acreage that may be treated. This is usually not the total crop acreage in production but the amount of acreage expected to be economically affected by the pest which will need treatment.**

f. The total amount of pesticide that may be used if applied at maximum application rates and the maximum number of applications.

**g. The use period (beginning and end dates) when the pesticide is expected to be applied. This may not exceed one year.**

**h. Specify the earliest expected date of harvest.**

**4. Alternative methods of Control**

**a. Pesticides currently registered:**

**Detailed explanations as to why these registered pesticides are ineffective or cannot be used. This explanation must be supported by field data, which demonstrate the ineffectiveness of registered pesticides, or written statements by qualified agricultural experts, extension and/or university personnel or other persons similarly qualified. An emergency is difficult to document without a detailed explanation of why registered pesticides are not effective.**

**b. Non-pesticide methods of pest control:**

**A detailed explanation of why alternative cultural practices either would not provide adequate control or would not be economically or environmentally feasible, must be presented.**

**5. Efficacy of Proposed Pesticide:**

*a. Field data or other evidence that documents that the use of the proposed pesticide will be effective in control of the pest problem.*

**6. Residues in Food:**

*a. Data must be provided to address whether residues are expected in or on food and an estimate of the maximum amount of residues likely to result from the proposed use. The EPA must set a temporary residue tolerance for all Section 18 registrations.*

**7. Potential Risk Information:**

*a. Human Health:*

*i. Acute toxicity information:*

*Potential to contaminate drinking water: Information should include the pesticide's persistence and mobility in soils and water; site conditions where the crop is grown that may enhance or retard movement to ground or surface water; or any other pertinent information that will assist in determining the pesticide potential to contaminate drinking water.*

ii. *Common Mode of Action:*

*Supply any information regarding a common mode of action with other pesticides.*

iii. *Non- Agricultural Uses:*

*Are there any residential uses of the pesticide, either indoor or outdoor? If so, what are the sites, rates and formulations used?*

iv. *Expected Crop Residue Data:*

*Data must be submitted to address whether residues are expected in or on the food or feed and the estimated maximum amount of residues likely to result from the proposed use.*

b. *Potential Risk to the Environment:*

i. *Threatened and Endangered Species:*

*Supply information on the presence of threatened and endangered species and other sensitive plants or animals and how they may be affected by the uses of the requested pesticide.*

ii. *Beneficial Organisms:*

*Supply information on effects to beneficial organisms such as predatory insects and honeybees.*

iii. *Other environmental effects*

8. Coordination with other affected state/federal agencies

10. Notification of Registrant

11. Enforcement Program

12. Repeat Uses

13. *Progress toward Registration*

## **Documentation of the Emergency Condition and Significant Economic Loss**

- 1. Common and Scientific Name of the Pest**
- 2. Discussion of the Emergency Condition:**

**Provide a discussion of the events that brought about the emergency and an explanation why the pest was not previously a problem requiring an emergency response. This may include weather conditions, a pest problem which occurs rarely or infrequently in Montana, documented pesticide resistance, pesticide cancellation or unavailability of an previously used pesticide, changes in crop management practices resulting in a pest increase (i.e. till to no-till, etc.), introduction of a new pest or other conditions that result in an unexpected pest problem.**

**Petitioners must demonstrate that the emergency is an urgent, non-routine situation. A chronic or continually occurring problem does not represent an urgent, non-routine situation.**

**The threshold at which it will be determined that an emergency will occur (i.e. percent of crop infested, infected or level of pest count). This applies to insects, weeds, diseases or nematodes.**

**Will livestock feed on the crop by-product or graze on the treated fields? If yes, explain.**

**A proposal to use an unregistered pesticide solely because it will improve yields or income because it is cheaper or more effective than available alternatives is not an acceptable basis for a Section 18 request.**

**3. Economic Benefits and losses (emergency areas only) expected:  
Data must be submitted to determine the estimated loss in crop yield and/or crop value as a result of the emergency condition. The data needed to calculate this loss must include:**

- a. Average yield per acre**
- b. Average price of the crop**
- c. Average cost of production**

**These data must be provided for the most recent 5 year period and will be used to create a table like that illustrated below:**

Year	Yield/Acre (lbs., bushels)	Price/Unit	Gross Revenue/Acre	Production Cost/Acre	Net Revenue/Acre
Year 1	xxx lbs	\$xx.xx	\$xxxx.xx	\$xx.xx	\$xxxx.xx
Year 2					
Year 3					
Year 4					
Year 5					
Ave.					

**Cost of production should include all input costs normally associated with raising the crop including: planting, tillage, seed, fertilizer, pest control and harvesting.**

**If the five years of requested data includes data from abnormal year(s), either favorable (ideal growing conditions) or unfavorable (drought), this should be explained in the discussion and an alternative estimate of the normal range in profitability provided. The application should fully explain how the alternative estimate of the normal range in profitability was derived.**

**The loss without the use of the proposed pesticide should be calculated based on comparison of the next best registered alternative pesticide, if one is available. The loss without the proposed pesticide cannot be compared to no control, unless no other control practice exists. It must be shown in demonstrating the existence of an emergency condition that an economically feasible alternative method, other than the use of the proposed pesticide, is not available to alleviate the situation. Documented data on the insect severity/weed infestations/disease situation from previous year(s), data indicating yield differences using registered pesticides vs. no treatment vs. data from trial/tests with the proposed pesticide must be submitted.**

	<b>Yield/Acre (lbs., bushels)</b>	<b>Price/Unit</b>	<b>Gross Revenue/Acre</b>	<b>Productio n Cost/Acre</b>	<b>Net Revenue/Acre</b>
<b>Current Year(1)</b>	estimated yield	estimated price	calculate \$\$	estimated cost	calculate \$\$
<b>Current Year(2)</b>	estimated yield	same as above	calculate \$\$	same as above	calculate \$\$
<b>Difference in yield &amp; gross/net revenues</b>	calculate yield	same as above	calculate \$\$	same as above	calculate \$\$

- (1) - Current year with use of proposed pesticide.  
(2) - Current year with use of next best pest control alternative.

