

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 170

[OPP-250097; FRL-4901-4]

RIN No. 2070-AC69

**Pesticide Safety Training for Workers
and Handlers; Grace Period and
Retraining Interval**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise the Worker Protection Standard (WPS) for agricultural pesticides by providing three options for a training grace period (number of days of employment before workers must be trained) and a phase-in period associated with the grace period. EPA is also proposing options for the retraining interval (number of years before workers or handlers must be retrained). The objective of the proposed changes to the Standard is to help meet the goal of providing a trained workforce capable of better protecting itself against pesticide illness and injury without imposing unreasonable costs on agricultural employers.

DATES: Written comments, identified by the document control number OPP-250097, must be received on or before February 10, 1995. EPA does not intend to extend this comment period.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted as comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by any of three different mechanisms: by sending

electronic mail (e-mail) to: Docket-OPPTS@epamail.epa.gov; by sending a "Subscribe" message to listserver@unixmail.rtpnc.epa.gov and once subscribed, send your comments to RIN-2070-AC69; or through the EPA Electronic Bulletin Board by dialing 202-488-3671, enter selection "DMAIL," user name "BB—USER" or 919-541-4642, enter selection "MAIL," user name "BB—USER." Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPP-250097 since all five documents in this separate part provide the same electronic address. No CBI should be submitted through e-mail. Electronic comments on this proposed rule, but not the record, may be viewed or new comments filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in unit VII. of this document.

FOR FURTHER INFORMATION CONTACT: Jeanne Heying, Certification and Training, and Occupational Safety Branch (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1109D, CM #2, 1921 Jefferson Davis Highway, Arlington VA, Telephone: 703-305-7371.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposal is issued under the authority of section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136w(a).

II. Background

This proposed WPS rule amendment is one of a series of Agency actions in response to concerns raised since publication of the final rule in August 1992 by those interested in and affected by the rule. In addition to this proposed amendment, EPA is publishing four other notices soliciting public comment on concerns raised by various affected parties. Other actions EPA is considering include: (1) Modifications to the requirements for those performing crop advisor tasks, (2) An exception to early entry restrictions for irrigation activities; (3) Reduced restricted entry intervals (REIs) for low risk pesticides; and (4) Reduced early entry restrictions for activities involving limited contact with treated surfaces.

FIFRA authorizes the EPA to regulate the sale, distribution, and use of pesticides in the United States. The Act requires generally that EPA license by registration each pesticide product sold or distributed in the United States, if use of the pesticide products will not cause "unreasonable adverse effects on the environment," a determination that takes into account the economic, social, and environmental costs and benefits of the use of any pesticide.

In 1992 EPA revised the Worker Protection Standard (40 CFR part 170) (57 FR 38102, August 21, 1992) which is intended to protect agricultural workers and handlers from risks associated with agricultural pesticides. The 1992 WPS superseded the original WPS promulgated in 1974. The 1992 WPS expanded the scope of the original WPS to include not only workers performing hand labor operations in fields treated with pesticides, but also workers in or on farms, forests, nurseries, and greenhouses, as well as handlers who mix, load, apply, or otherwise handle pesticides for use at these locations in the production of agricultural commodities. The WPS contains requirements for training, notification of pesticide applications, use of personal protective equipment, restricted entry intervals, decontamination, and emergency medical assistance.

In § 170.130(c)(4), the WPS sets out required training elements for workers, including information on pesticide hazards and exposures, signs and symptoms of pesticide poisoning, how to obtain emergency medical care, decontamination measures in case of exposure and other pesticide hazards that may arise in the course of their work.

Section 170.230(c)(4) of the WPS establishes the required training elements for handlers. These include generally the same information as for workers. However, handlers are provided additional information related to their handling activities: the meaning and format of pesticide labels; information on personal protective equipment; signs, symptoms and treatment for heat-related illness; handling pesticides and pesticide containers; environmental contamination and hazards to non-target species; and other information on their responsibilities as handlers. Training for handlers is more detailed than for workers, and is targeted specifically toward handling needs and responsibilities.

Training for workers or handlers may be conducted by certified applicators or other trainers who meet State, Federal,

or Tribal requirements. The agricultural employer, however, is responsible for assuring that workers receive required training and the handler employer is responsible for assuring that handlers receive the required training.

To assist agricultural employers in fulfilling their responsibilities to ensure training and to provide a uniform national standard for the conduct of worker training, EPA and the U.S. Department of Agriculture have established a joint training verification program. Under this program, which would be administered on a voluntary basis by States through agreements with EPA, workers who have been trained may be issued a training verification card. The card could be shown to each agricultural employer who hires the worker. Under § 170.130(d) possession of a valid card serves as proof of training, thus relieving the employer of having to provide training or to determine whether and when training is required.

The training verification program is beneficial to the agricultural employer and workers alike in that it provides a common basis for agreement that training provided to the worker meets the requirements of the WPS. EPA expects the training verification card program to benefit agricultural employers because it obviates the need to train a worker, thus minimizing the costs of the WPS training requirement. Without such a card system, the employer might have to provide training more frequently and to more workers to assure that all had received training.

For workers, possession of a card assures that they will be able to work immediately without unnecessary delay for training.

III. Current WPS Training Provisions at Issue

This proposal addresses three elements of the worker training requirements. The three elements are: the grace period before training must be provided; the phase-in period for the grace period for workers; and the retraining requirement for workers and handlers.

1. *The grace period before training must be provided.* Section 170.130(a)(3)(i) requires agricultural employers to assure that workers have been trained in pesticide safety before their 6th day of entry into areas on the agricultural establishment that have been treated with a pesticide or that have been under a restricted entry interval (REI) within the previous 30 days.

EPA emphasizes that the grace period applies only to routine worker training,

not early-entry training or handler training. No changes are being proposed or considered for early entry or handler training.

2. *The interim grace period for workers.* The current WPS requires that the agricultural employer assure that a worker receives pesticide safety training before the 6th day of entry into any treated area on the agricultural establishment. Section 170.130(a)(3)(ii) provides for an exception for a 5-year period until October 20, 1997, during which time workers would be allowed to enter treated areas at the establishment for 15 days before the employer must assure that they have been trained. After October 20, 1997, the 15-day grace period is no longer in effect.

3. *The retraining requirement for workers and handlers.* Section 170.130(a)(1) requires that agricultural employers assure that each worker has been trained within the previous 5 years. Section 170.230(a)(1) requires that handler employers assure that each handler has been trained within the previous 5 years.

IV. Reasons for this Proposal

The WPS is intended to reduce the risk of pesticide poisonings and injuries among agricultural workers and pesticide handlers through implementation of appropriate measures. Pesticide safety training is a key component of the Standard - trained, informed workers and handlers can take steps to avoid exposure or mitigate harmful pesticide effects, thereby reducing the number and severity of pesticide poisonings and other adverse effects.

Subsequent to promulgation of the final rule in 1992, the Agency received comments from farm worker groups suggesting changes in the grace period and the retraining interval. Additionally, the Agency was petitioned by the National Association of State Departments of Agriculture (NASDA) to eliminate the interim grace period. The Agency also met a number of times with farm worker groups to hear their concerns on the worker training provisions. Following is a summary of their concerns on the training grace period and 5-year retraining interval.

A. Training Grace Period

Farm worker groups are concerned that the current grace period would result in untrained workers being harmed on the job. They contrasted the WPS grace period with the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard training

requirement (29 CFR 1910.1200), under which workers must be trained about hazardous chemicals in their work area before first exposure.

States and farm worker groups asserted that the grace period would be difficult to enforce. Subsequent to publication of the WPS, the California Department of Pesticide Regulation (CDPR) raised concern about the anticipated difficulties in enforcing the training requirement. They asserted that it may not be feasible to track accumulated days in treated areas in anticipation of the required training and that employers cannot track the activities of every worker in their employ.

Additionally, farm worker groups were concerned that the grace period could encourage employers to avoid providing the required training. They were particularly concerned that, because of the transient nature of the agricultural workforce, workers who move frequently might never be trained if training were required only after a 5-day grace period per establishment. They noted that some workers might not spend 5 days on any particular establishment.

Finally, the farm worker groups argued that all workers should be entitled to know how to protect themselves from pesticide residues before entering treated areas; for training to be effective in reducing risk, they argued, training must take place before possible exposure to pesticides.

B. Five-Year Retraining

Farm worker groups are concerned that the 5-year retraining interval is too long to be effective. They assert that large numbers of workers and handlers, particularly field labor contractor employees, might not have regular access to the safety poster displayed on the agricultural establishment because they are hired off the farm and taken directly to the field. EPA's confidence in the safety poster as a means of reinforcing training, they claim, is misplaced. Also, many workers and handlers may not read well (or not be literate in the poster language), so the impact of poster messages might be limited. Qualified trainers assert that repeat training enhances the retention of safety training information.

The farm worker groups also requested a shorter retraining interval. They pointed to other regulatory programs under OSHA, EPA, and State initiatives that require annual retraining. They also noted that agricultural employment is seasonal in nature, and farm workers realistically cannot be expected to remember

training information for such a long period of time. The groups asserted that more frequent retraining is needed for farm workers who are illiterate or have poor reading skills, and cannot rely on written materials to refresh their training.

In response to these concerns, EPA proposes to revise the Worker Protection Standard as described in units V. and VI. of this document.

V. The Grace Period and Interim Grace Period

EPA is proposing three options for consideration and comment: the first option involves eliminating the 15-day grace period so that employers would have to train workers before they enter a treated area, and providing a 1-year interim period before the 0-day grace period would go into effect, the second option involves shortening the 15-day grace period so that employers would be required to train workers between 1 and 5 days after the worker has been hired and the third option involves requiring a weekly training program. The Agency is interested in receiving comments on all options presented.

(1) Shortening the grace period from 15 to 0 days after a 1 year interim grace period. The Agency is considering eliminating the training grace period. If the grace period were eliminated entirely, all new workers would have to be trained before entering a treated area. An interim grace period of 1 year is being proposed to allow employers to prepare for the elimination of the grace period.

Training new workers before any possible exposure may be the most protective option. No worker would lack training because he or she had not worked enough days with a single employer. By eliminating the grace period, it is expected that compliance would be easier for the employer and state enforcement officer, because there would be no need to determine whether the worker had accumulated the requisite number of workdays on the establishment.

A 0-day grace period could result in the need for more frequent, possibly daily, training sessions. More frequent training sessions could result in increased training costs. Also, workers may have to be trained more than once if the employer could not assure that the worker had already received training.

(2) *Shortening the grace period from 15 days to between 1 and 5 days.* The Agency is considering shortening the grace period from 15 days to between 1 and 5 days. Workers would be trained earlier and perhaps better able to avoid or mitigate pesticide exposures. By

shortening the grace period, the possibility that workers would remain untrained because they moved frequently from employer to employer without accumulating the requisite number of days at any given establishment to require training would decrease.

Shortening the grace period is likely to increase the costs of training, since employers with higher rates of turnover in the workforce would have to schedule more frequent training sessions. Any grace period at all could mean that agricultural employers would need to track the number of days of entry each worker has accumulated in order to determine whether training must be provided. This could present a burden which could be substantial depending on the number of workers hired at the establishment, and the number who possess training verification cards.

(3) *Requiring a weekly training program.* The Agency is considering an option, where an employer would be required to provide a training session once a week to all untrained workers. This option might reduce the instances of workers entering treated areas before being trained, while reducing the training burden on employers by allowing predictability in providing training on a scheduled basis. A weekly training session may also result in less disruption to field labor activities. Also, a weekly training session may reduce cost by allowing for more trainees per session. For establishments with employee turnover, a weekly training session allows employers to "accumulate" new hires over the span of the week, potentially resulting in fewer training sessions needed than if employers were required to train each employee before applicable field entry. A weekly training session for untrained workers may, however, add a recordkeeping burden to the employer.

The Agency is interested in receiving information and comments on all options, particularly the benefits expected to be gained by shortening the grace period, as well as expected costs. Specifically, the Agency is seeking information on the following: the practicality and effectiveness of the options, how the frequency of new hires may effect the frequency of training sessions, the rate of turnover in employment among agricultural workers and handlers, situations where training before entry would not be possible, the risks and/or benefits of providing safety training information before or after entering a treated area, the feasibility of providing training on a short notice to English and non-English speaking

workers, mechanisms that are available or will be available to provide training on short notice, the impact on the employer and agricultural worker of a 1 year interim grace period before the 0-day grace period would go into effect, specific problems caused by eliminating or shortening the interim grace period 5 years to 1 year and what could be done to eliminate those problems, what the regulated community has done to develop training programs in the 2 years since the WPS was issued and the estimated costs of a 0-day, 1 to 5-day grace period or a weekly training regimen.

VI. The Retraining Interval for Workers and Handlers

The Agency is proposing for comment three options for the retraining interval for workers and handlers; (1) retaining the 5 year retraining interval, (2) shortening the retraining interval from 5 to 3 years or (3) provide annual retraining.

Since chemical use patterns frequently change, and new hazards may be identified for existing chemicals, a shortened retraining interval would be helpful in mitigating the potential hazards to farm workers and handlers.

The cost to employers of providing training to workers and handlers during an "out" year (any year after the first year of implementation) increases as the retraining period decreases. First year training costs are unaffected by the retraining interval. All workers must be trained during the first year, and handlers must be trained before they first handle pesticides. Due to turnover in the workforce, training after the first year will not be limited to every third year for a 3 year retraining interval. Rather, some mix of training and retraining will occur during all typical out years. A shorter retraining interval may require more training sessions during the average out year, with higher total costs. Also, if training of new workers and retraining of workers in out years are done at the same time, the costs of retraining (regardless of frequency) may be partially subsumed in the costs for initial training.

The Agency is interested in receiving information and comments on all options, particularly the benefits expected to be gained by shortening the retraining interval, as well as the impacts of a 5 year, 3 year and annual retraining interval. Specifically, the Agency is seeking information on the following: worker and handler retention of safety training information, whether agricultural workers and handlers have a greater need for retraining than workers in other occupations, the

effectiveness of the pesticide poster in reinforcing previous training and the burdens the various retraining options might place on agricultural employers or other entities that may perform worker or handler training. Concerns with each of the options are requested as well.

Commenters supporting retaining the current 5-year retraining interval, shortening the retraining interval to 3 years, or providing annual retraining, should state explicitly the reasons for, and provide information on the need, costs and feasibility of, the recommended option.

VII. Solicitation of Comments

A record has been established for this rulemaking under docket number "OPP-250097" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. Written comments should be mailed to: Public Response and Program Resources Branch, Field Operations Division (7506C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

EPA is interested in receiving comments and information on all of the proposed options. Comments are requested on: (1) general worker and handler hiring and employment practices, such as the rate of turnover and employment among agricultural workers and handlers, (2) the practicality and effectiveness of the grace period options, including how the frequency of hiring would affect the frequency of training sessions, situations where training before entry would not be possible, mechanisms that are available or will be available to provide training on short notice and the estimated costs of reducing or eliminating the grace period or providing a weekly training regimen, (3) the practicality and effectiveness of eliminating the interim grace period for training and (4) the retraining interval, including the impacts of a retraining interval of less than 5 years, worker and handler retention of safety training information over time, whether

agricultural workers and handlers have a greater need for retraining than workers in other occupations, the effectiveness of the pesticide poster in reinforcing previous training and the burdens the various retraining options might place on agricultural employers or other entities that may perform worker or handler training. Comments should be distinguished as applying to workers, handlers, or both, as applicable.

As part of an interagency "streamlining" initiative, EPA is experimenting with submission of public comments on selected **Federal Register** actions electronically through the Internet in addition to accepting comments in traditional written form. This proposed exception is one of the actions selected by EPA for this experiment. From the experiment, EPA will learn how electronic commenting works, and any problems that arise can be addressed before EPA adopts electronic commenting more broadly in its rulemaking activities. Electronic commenting through posting to the EPA Bulletin Board or through the Internet using the ListServe function raise some novel issues that are discussed below in this Unit.

To submit electronic comments, persons can either "subscribe" to the Internet ListServe application or "post" comments to the EPA Bulletin Board. To "Subscribe" to the Internet ListServe application for this proposed exception, send an e-mail message to: listserver@unixmail.rtpnc.epa.gov that says "Subscribe RIN-2070-AC69 <first name> <last name>." Once you are subscribed to the ListServe, comments should be sent to: RIN-2070-AC69@unixmail.rtpnc.epa.gov. All comments and data in electronic form should be identified by the docket number OPP-250097 since all five documents in this separate part provide the same electronic address.

For online viewing of submissions and posting of comments, the public access EPA Bulletin Board is also available by dialing 202-488-3671, enter selection "DMAIL," user name "BB-USER" or 919-541-4642, enter selection "MAIL," user name "BB-USER." When dialing the EPA Bulletin Board type <Return> at the opening message. When the "Notes" prompt appears, type "open RIN-2070-AC69" to access the posted messages for this document. To get a listing of all files, type "dir/all" at the prompt line. Electronic comments can also be sent directly to EPA at:

Docket-OPPTS@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. To obtain further information on the electronic comment process, or on submitting comments on this proposed exception electronically through the EPA Bulletin Board or the Internet ListServe, please contact John A. Richards (Telephone: 202-260-2253; FAX: 202-260-3884; Internet: richards.john@epamail.epa.gov).

Persons who comment on this proposed rule, and those who view comments electronically, should be aware that this experimental electronic commenting is administered on a completely public system. Therefore, any personal information included in comments and the electronic mail addresses of those who make comments electronically are automatically available to anyone else who views the comments. Similarly, since all electronic comments are available to all users, commenters should not submit electronically any information which they believe to be CBI. Such information should be submitted only directly to EPA in writing as described earlier in this Unit.

Commenters and others outside EPA may choose to comment on the comments submitted by others using the RIN-2070-AC69 ListServe or the EPA Bulletin Board. If they do so, those comments as well will become part of EPA's record for this rulemaking. Persons outside EPA wishing to discuss comments with commenters or otherwise communicate with commenters but not have those discussions or communications sent to EPA and included in the EPA rulemaking record should conduct those discussions and communications outside the RIN-2070-AC69 ListServe or the EPA Bulletin Board.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically in the RIN-2070-AC69 ListServe or the EPA Bulletin Board, in accordance with the instructions for electronic submission, into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. All the electronic comments will be available to everyone who obtains access to the RIN-2070-AC69 ListServe or the EPA Bulletin Board; however, the official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. (Comments

submitted only in written form will not be transferred into electronic form and thus may be accessed only by reviewing them in the Public Response and Program Resources Branch as described above.)

Because the electronic comment process is still experimental, EPA cannot guarantee that all electronic comments will be accurately converted to printed, paper form. If EPA becomes aware, in transferring an electronic comment to printed, paper form, of a problem or error that results in an obviously garbled comment, EPA will attempt to contact the comment submitter and advise the submitter to resubmit the comment either in electronic or written form. Some commenters may choose to submit identical comments in both electronic and written form to ensure accuracy. In that case, EPA requests that commenters clearly note in both the electronic and written submissions that the comments are duplicated in the other medium. This will assist EPA in processing and filing the comments in the rulemaking record.

As with ordinary written comments, at the time of receipt, EPA will not attempt to verify the identities of electronic commenters nor to review the accuracy of electronic comments. Electronic and written comments will be placed in the rulemaking record without any editing or change by EPA except to the extent changes occur in the process of converting electronic comments to printed, paper form.

If it chooses to respond officially to electronic comments on this proposed rule, EPA will do so either in a notice in the **Federal Register** or in a response to comments document placed in the rulemaking record for this proposed rule. EPA will not respond to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or conversion to printed, paper form as discussed above. Any communications from EPA employees to electronic commenters, other than those described in this paragraph, either through Internet or otherwise are not official responses from EPA.

VIII. Statutory Requirements

As required by FIFRA section 25(a), this proposed rule was provided to the U.S. Department of Agriculture and to Congress for review. The FIFRA Scientific Advisory Panel waived its review.

USDA provided extensive written comment. The general tenor of USDA comments suggest suspending the proposed changes to the training

requirement until EPA observes the efficacy of current training provisions and the feasibility of a 0-day grace period. However, the Agency maintains that the options being proposed increase the chance of protection through earlier provision of safety training. The Agency intends to observe and evaluate the effectiveness of training in the field, with whatever option is selected.

USDA's specific comments focused on the following areas: (1) Elimination of the grace period; (2) retraining interval; (3) training requirements by category; (4) the regulatory impact analysis; (5) training verification.

(1) USDA expressed concern that elimination of the 5-day grace period would create costs for the employer, by preventing scheduled training for large groups, while providing little or no increase in the protection for workers. EPA believes that the elimination of the grace period will provide increased protection to workers by providing safety information before workers enter a treated area. The incremental cost incurred by the employer does not appear to outweigh the benefits that come with the potential prevention of exposure.

EPA and USDA have differing opinions regarding the employer recordkeeping burden necessitated by a grace period. However, it is agreed that, for state regulators to verify compliance with the regulations, some employer burden of recordkeeping would be necessary during a grace period.

USDA questions the need to train workers before they enter a treated field, due to other WPS protection provided workers, while EPA believes that these provisions are part of an integrated package of measures that are effective only after being explained through training. USDA suggests that, as a means to enhance understanding of pesticide safety, employers distribute the WPS worker training handbook to newly hired employees and follow with training in a few days, however this assumes that all employees would be able to read and understand the materials.

(2) USDA questions the need for a shorter retraining interval, however, professional training organizations and farmworker groups assert that more frequent retraining is needed in order to assure retention of the substance of training sessions. More frequent retraining is especially needed for workers who may have poor reading skills and cannot rely on written materials to recall all safety information.

(3) USDA expresses concern that clear distinctions be made among handlers, early-entry workers, production laborers

and harvesters, and that they may also warrant different training requirements. EPA believes that the current regulation's distinctions between workers, handlers, and early-entry workers address USDA's concerns since these categories have different training requirements. This proposal does not address the substance of training or the training requirements.

(4) USDA questions the strength of the conclusions of studies used in the regulatory impact analysis to support the assumption that risk is reduced through modifications of behavior after training. They also note that EPA uses the same number estimate for workers trained with a 0-day grace period and a 15-day grace period. In the absence of data, EPA did use the same estimate of workers, and, as a consequence, conservatively overestimated the cost of a 0-day grace period. USDA questions the accuracy of other data that EPA used in the analysis of the costs of a 0-day grace period, however, EPA used USDA data and agricultural census data for this analysis.

USDA asserts that the effect of a 0-day grace period could influence the employer to lower pay, possibly eliminate jobs. EPA believes that the cost of training would be small relative to the total cost of labor. USDA noted that EPA's estimate of the number of workers is incorrect. EPA used the same estimate of the number of workers as was used, and agreed upon by USDA, for the 1992 WPS. USDA pointed out that EPA's estimate of the number of handlers and workers is incorrect due to the use of 1987 data instead of 1990 data. EPA believed that the 1987 data were better in that they were agricultural census data as opposed to general census data.

USDA questions the use of 30 minutes per worker training session in EPA's cost estimates. EPA's worker training program was field tested in both English and Spanish, and, with questions, took approximately 30 minutes.

(5) USDA claims that the additional proof-of-identity requirement would be extremely difficult for employers to meet and would be a disincentive for employers to issue cards. This is a misreading of the WPS provision that ... "If the agricultural employer is aware or has reason to know that an EPA training verification card has not been issued in accordance with the provisions of WPS, or has not been issued to the employee bearing the card, or the date for retraining has past, an employee's possession of that training verification card does not relieve the employer of the training obligations under WPS."

USDA noted that issuing training cards would assist other employers who hire already trained workers. In addition, USDA is concerned that handlers and workers that possess cards will become preferred job applicants. USDA fears that since not all states on or verification cards it will cause a burden to job applicants in states where cards are not honored and give job preference to those employees who possess cards.

The regulation establishes a training verification program that is voluntary, therefore, not all employers will participate. However, employers who do participate will relieve themselves from the burden of retraining workers who have already been trained.

Forty states, Puerto Rico and 2 tribes have entered into an agreement to issue training verification cards. Three additional states say they will be entering into an agreement. Four states already have programs that are identical to the Federal program and will issue state cards. Over 2.5 million cards have been delivered to states who have entered into the program. By law, the employer can accept the card as verification that the employee was trained.

USDA raised concern over the verification cards that have an expiration date based on the initial 5-year retraining interval date. Training cards are valid until the expiration date stated on the card. When the retraining interval is changed, these training cards will remain valid until the expiration date on the card.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is a "significant regulatory action" because it raised potentially novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The total cost of this rule depends on the combination of options under the grace period and the retraining interval selected. The costs have been estimated by EPA and are presented in the Impact Assessment for the Worker Protection Standard, Training Provisions Rule. This proposal was submitted to OMB for review, and any comments or changes made have been documented in the public record.

B. Regulatory Flexibility Act

This rule was reviewed under the provisions of sec. 3(a) of the Regulatory

Flexibility Act, and it was determined that the rule would not have a significant adverse impact on a substantial number of small entities. The smallest entities regulated under the Worker Protection Standard, family-operated agricultural establishments with no hired labor, are not subject to the training requirements, and therefore have no cost associated with this rule. These small entities (with no hired labor) represent about 45 percent of the agricultural establishments within the scope of the WPS. The smallest of those entities which do hire labor are those with only one hired employee. Estimated costs per worker or handler are similar for an establishment with one employee as for larger establishments, causing no significant disproportionate burden on small entities. After the first year of implementation, the average annual training costs to comply with these regulations (not including the costs already being incurred) is also very modest, estimated at about \$2.20 per worker.

The largest difference in costs per worker occurs on vegetable/fruit/nut farms, where estimated incremental first year cost per worker is \$4.13 on small farms and \$3.06 on larger farms; incremental first year cost per handler is estimated at \$11.55 for both small and large farms. The largest cost per establishment is also on vegetable/fruit/nut farms, where incremental first year cost per establishment is estimated to be \$4.13 to \$11.55 for small (single-employee) farms, and \$77.49 for the typical large farm. Incremental cost of the proposed training options is also very modest. Average incremental cost to vegetable/fruit/nut farms (all sizes), is estimated at \$37.15 the first year and \$17.51 in subsequent years.

I therefore certify that this proposal does not require a separate analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposal contains no information collection requirements, and is therefore not subject to the Paperwork Reduction Act.

D. Public Docket

EPA has established a public docket (OPP-250097) containing the information used in developing this proposed rule. The public docket is open Monday through Friday from 8 a.m. to 4 p.m. and is located in Crystal Mall #2, Room 1132, 1921 Jefferson Davis Highway, Arlington, VA.

List of Subjects in Part 170

Environmental protection, Pesticides and pests, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements.

Dated: January 3, 1995.

Carol M. Browner,
Administrator.

Therefore, 40 CFR part 170 is proposed to be amended as follows:

1. The authority citation would continue to read as follows:

Authority: 7 U.S.C. 136w.

2. In § 170.130, by revising the section heading and paragraph (a)(1), removing paragraph (a)(3), and by revising paragraph (d)(2) to read as follows:

§170.130 Pesticide safety training for workers.

(a) * * *

(1) *Requirement.* The agricultural employer shall assure that each worker required by this section to be trained has been trained in accordance with paragraph (c) of this section before the worker enters, or before between the 1st and 6th day that the worker enters any area or during the first weekly training session available to each worker provided by the employer [grace period to be determined based on public comment will be insert in the final rule] on the agricultural establishment where, within the last 30 days, a pesticide to which this subpart applies has been applied or a restricted-entry interval for such pesticide has been in effect. The agricultural employer shall assure that each such worker has been trained during the last (Agency will insert 1, 3, or 5 years in the final rule based on public comment) counting from the end of the month in which the training was completed.

* * * * *

(d) * * *

(2) If the agricultural employer is aware or has reason to know that an EPA-approved Worker Protection Standard worker training certificate has not been issued in accordance with this section, or has not been issued to the worker bearing the certificate, or the training was completed more than (Agency will insert 1, 3, or 5 years in the final rule based on public comment) before the beginning of the current month, a worker's possession of that certificate does not meet the requirements of paragraph (a) of this section.

* * * * *

3. In §170.230, by revising the section heading and paragraphs (a) and (d)(2) to read as follows:

§170.230 Pesticide safety training for handlers.

(a) *Requirement.* Before any handler performs any handling task, the handler employer shall assure that the handler has been trained in accordance with this section during the last (Agency will insert 1, 3, or 5 years in the final rule based on public comment) counting from the end of the month in which the training was completed.

* * * * *

(d) * * *

(2) If the handler employer is aware or has reason to know that an EPA-approved Worker Protection Standard handler training certificate has not been issued in accordance with this section, or has not been issued to the handler bearing the certificate, or the handler training was completed more than (Agency will insert 1, 3, or 5 years in the final rule based on public comment) before the beginning of the current month, a handler's possession of that certificate does not meet the requirements of paragraph (a) of this section.

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BILLING CODE 6560-50-P

40 CFR Part 170

[OPP-250100; FRL-4928-7]

RIN 2070-AC82

Pesticide Worker Protection Standard; Requirements for Crop Advisors

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the worker protection requirements for agricultural establishments, by exempting certified or licensed crop advisors from the requirements. EPA is also proposing to exempt crop advising employees of certified or licensed crop advisors from the WPS requirements except pesticide safety training. A temporary exemption for all persons doing crop advising tasks to allow time for acquiring licensing or certification is also proposed.

DATES: Written comments must be received on or before February 10, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.,

Washington, DC 20460. In person, bring comments to: Room 1132, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted in any comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments, including non-CBI copies, will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by any of three different mechanisms: by sending electronic mail (e-mail) to: Docket-OPPTS@epamail.epa.gov; by sending a "Subscribe" message to listserver@unixmail.rtpnc.epa.gov and once subscribed, send your comments to RIN-2070-AC69; or through the EPA Electronic Bulletin Board by dialing 202-488-3671, enter selection "DMAIL," user name "BB-USER" or 919-541-4642, enter selection "MAIL," user name "BB-USER." Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPP-250100 since all five documents in this separate part provide the same electronic address. No CBI should be submitted through e-mail. Electronic comments on this proposed rule, but not the record, may be viewed or new comments filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in unit VI. of this document.

FOR FURTHER INFORMATION CONTACT:

Donald E. Eckerman Office of Pesticide Programs (7506C) Environmental Protection Agency 401 M Street, SW Washington, DC 20460 Office location and telephone number: Room 1101, Crystal Mall 2 1921 Jefferson Davis Highway Arlington, VA 22202 Telephone: 703-305-7371.

SUPPLEMENTARY INFORMATION: EPA is proposing this rule in response to

comments received from crop advisor groups requesting exemptions from the Worker Protection Standard (WPS). Specifically, EPA is proposing to amend 40 CFR Part 170, governing worker protection requirements on agricultural establishments, to exempt certified or licensed crop advisors from the requirements of the rule. EPA is also proposing to exempt crop advising employees of certified or licensed crop advisors from the WPS requirements except pesticide safety training. A temporary exemption for all persons doing crop advising tasks to allow time for acquiring licensing or certification is also proposed.

I. Statutory Authority

This proposed rule is issued under the authority of section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136w(a).

II. Background

This proposed WPS rule amendment is one of a series of Agency actions in response to concerns raised since publication of the final rule in August 1992 by those interested in and affected by the rule. In addition to this proposed amendment, EPA is publishing four other notices soliciting public comment on concerns raised by various affected parties. Other actions EPA is considering include: (1) modification to the worker training requirements; (2) exceptions to early entry restrictions for irrigation activities; (3) reduced restricted entry intervals (REIs) for low risk pesticides; and (4) reduced early entry restrictions for activities involving limited contact with treated surfaces. The Agency is interested in receiving comments on all options and questions presented.

FIFRA authorizes EPA to regulate the sale, distribution, and use of pesticides in the United States. The Act generally requires that EPA license by registration each pesticide product sold or distributed in the United States, if use of that the pesticide product will not cause "unreasonable adverse effects on the environment," a determination that takes into account the economic, social, and environmental costs and benefits of the use of the product.

In 1992 EPA revised the WPS (40 CFR Part 170) (57 FR 38102, August 21, 1992) which is intended to protect agricultural workers and handlers from risks associated with agricultural pesticides. The 1992 WPS superseded the original WPS promulgated in 1974 and expanded the WPS scope to include not only workers performing hand labor operations in fields treated with