

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 170**

[OPP-250107; FRL-4969-4]

Pesticide Worker Protection Standard; Language and Size Requirement for Warning Signs**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA proposes to revise the Worker Protection Standard (WPS) to allow the substitution of an alternate language for the Spanish portion of the warning sign and to allow the use of smaller warning signs in greenhouses and nurseries where the use of the standard size sign may interfere with operations or the clear identification of treated areas. These changes will allow the flexibility to tailor the sign to accommodate a workforce whose predominant language is neither English nor Spanish. In addition, the changes will modify the rule's existing criterion for allowing smaller signs in nurseries and greenhouses and will facilitate posting of treated areas.

DATES: Written comments, identified by the docket control number OPP-250107, must be received on or before November 13, 1995.

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.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. 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-250107. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit V. of this document. Information submitted as a comment concerning this document may be claimed confidential by marking

any part or all of that information as 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 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: John MacDonald or Linda Strauss, Certification and Training, and Occupational Safety Branch (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: 703-305-7666, e-mail: strauss.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:**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. sections 136-136y.

II. Background

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 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 pesticides 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.

This proposed WPS rule amendment is one of a series of Agency actions in response to concerns raised by stakeholders affected by the rule. In addition to this proposed amendment, elsewhere in this issue of the Federal Register, EPA is issuing another proposal soliciting public comment regarding modifying the requirements for decontamination supplies for

workers when low toxicity pesticides are used.

III. Current Requirements and Proposal for Bilingual Signs**A. Current Requirements**

Section 170.120 of the WPS requires that signs warning of pesticide-treated areas be in both English and Spanish. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," shall be at the top of the sign, and the words "KEEP OUT" and "NO ENTRE" shall be at the bottom of the sign. All letters must be clearly legible and visible from all usual points of worker entry into the treated area. Also, the regulation allows additional information to be placed on the warning sign if the information does not detract from the appearance of the sign or change the meaning of the required information.

B. Reasons for this Proposal

In the preamble to the final regulation, EPA discussed its rationale for adoption of Spanish as the second language on the warning sign. EPA realized that non-English readers were not solely Spanish readers. However, EPA believed imposition of a requirement to identify all languages spoken and development of alternative signs would be an unnecessary burden on agricultural employers.

Since publication of the regulation, EPA has received a number of comments on the English/Spanish warning signs. These commenters are concerned about workers who do not read English or Spanish and have requested that EPA allow a grower to eliminate or replace the Spanish portion of the warning sign based upon the composition of the workforce. They stated that, in some parts of the country, Spanish-reading workers are not common and the requirement to include Spanish on the sign should be limited to those areas where a significant number of Spanish-reading workers are employed.

Farmworker representatives have commented that it should be mandatory to add to the warning sign all languages used by workers at the establishment.

C. Proposal to Modify the Second Language Requirements on the Sign

In response to the above comments, EPA believes that allowing growers the option to replace the Spanish portion of the warning sign with an appropriate language that is more representative of the language read by the workforce will promote worker understanding of the information on the sign and enhance

worker safety. Presently, EPA believes that the number of farmworkers who read a language other than English or Spanish is approximately 5 percent of the United States farmworker population. EPA believes this represents a large enough population to warrant this proposal.

EPA considered the farmworker proposal that warning signs contain all languages spoken by workers on an establishment. While the Agency agrees that it would be ideal to have a warning sign(s) capable of being read by all workers, EPA believes that a requirement for multiple signs using different languages would be difficult to administer and would place an unnecessary burden on growers. Specifically, such a proposal could require frequent review of the languages spoken by the workforce and frequent sign modifications. The sign also could become cluttered and be less likely to be read and understood by the workers. Further, under the regulation, the WPS-required training for workers must be presented in a manner that the workers can understand (such as through a translator) and must convey the purpose and posting of warning signs. For these reasons, EPA is not proposing adoption of a requirement that warning signs contain all languages read by workers on an establishment.

EPA is proposing the following for consideration and comment:

EPA proposes to allow growers the option of replacing the Spanish portion of the warning sign with the written language that is most read by the portion of the workforce that does not read English. If finalized, this would be an option for growers and would not preclude the continued use of the English/Spanish sign, which would remain acceptable. If the grower chooses this approach, the second language must represent a language read by a majority of workers who do not read English. The English portion of the sign must not be omitted. Workers capable of reading both English and other language(s) should be considered English readers.

Under this proposal, growers who wish to replace the Spanish portion of the sign may accomplish this in several ways, including: (1) Covering the Spanish portion with a sticker displaying the appropriate second language, (2) writing in the substitute language on a sign produced with a blank portion, or (3) using originally produced warning signs with a second language other than Spanish. This proposal would not affect other format and design requirements of the WPS, including the requirement that signs must be visible, legible and

weatherproof, during the time they are posted.

The proposed text that would give growers the option of replacing the Spanish portion of the sign with a language other than Spanish is located in the regulatory text of this document.

D. Solicitation of Comments on Bilingual Signs

EPA is interested in receiving comments and information on the proposed option. Specifically, comments are requested on:

1. What are the advantages and disadvantages of changing the current warning sign provisions of the WPS to allow for the use of a non-Spanish second language?
2. What are the advantages and disadvantages of requiring all languages read by workers to be included on the warning sign?
3. If growers wish to replace the Spanish portion of the sign with another language, how practical and effective are the proposed options? Are there methods other than those identified by EPA, which would be more effective in facilitating the proposed language substitution?
4. If growers choose to use a non-Spanish second language, how should growers identify the non-Spanish language which is read by a majority of workers who do not read English?
5. What are the costs, availability, production time, and general feasibility of producing signs with a second language other than Spanish under the provisions of the proposed regulation?

IV. Current Sign Requirements and Proposal for Smaller Signs

A. Current Requirements

WPS § 170.120(c)(2) specifies that warning signs must be 14" X 16" (standard) in size, and the letters shall be at least 1 inch in height, unless a smaller sign and smaller letters are necessary "because the treated area is too small to accommodate a sign of this size."

Also, the signs must remain visible and legible during the time they are posted. On agricultural establishments, the signs must be visible from all usual points of worker entry to the treated area, or if there are no usual points of entry, signs must be posted in the corners of the treated area or in any other location affording maximum visibility. On farms and in forests and nurseries, usual points of entry include each access road, each border with any labor camp adjacent to the treated area, and each footpath and other walking route that enters the treated area. In

greenhouses, usual points of entry include each aisle or other walking route that enters the treated area.

B. Reasons for this Proposal

In the proposal of the 1992 regulation, the Agency did not propose a size requirement for warning signs, however signs were to be "clearly legible." However, in the response to comments on the proposal, the Agency explained that the final rule would specify a sign size because that would promote the use of generic signs and eliminate any ambiguity as to what is "clearly legible." The document also states that EPA would require 14" X 16" size signs, except where that size would be impractical, such as for posting individual potted plants and where numerous crops are grown in relatively small areas. In the final rule, however, use of the smaller sign was restricted only to areas where the size of the treated area would not accommodate a 14" X 16" size sign.

Since publication of the 1992 rule, the American Association of Nurserymen (AAN) has commented that use of smaller signs should not be limited to situations where the treated area is too small to accommodate a standard size sign, as the current rule requires. The AAN asserts that use of smaller signs should be an option in a wide variety of greenhouse and nursery production settings. The AAN reports that, as growers have tried to implement the current WPS sign requirements, the 14" X 16" (standard) size signs have been impractical and burdensome in greenhouses and nurseries, given the intensity and frequency of labor activity in these smaller-scale operations and their reliance on and requirement by WPS for posting. In greenhouses, all pesticide applications must be posted and oral notification to workers is required as well for some products. Although oral notification is an option in nurseries in most circumstances, posting is generally preferred by the industry because it would be difficult for workers to remember the locations of all the treated areas.

The AAN provides several reasons why the 14" X 16" signs interfere with operations and the clear identification of treated areas in greenhouse and nursery settings. First, they state that, as compared to farms and forests, the use of the standard size signs can result in crowding and confusion about the exact boundary of each of the treated areas because many signs can be required in a small area where there are different treatment regimes which are in close proximity. Second, installing, removing, and storing the standard size signs and

the physical supports, such as metal or wooden poles, presents added costs and difficulties for the industry. Third, the physical supports needed for the 14" X 16" inch signs can prevent operation of the standard machinery and equipment used in these operations and can obstruct overhead irrigation spray equipment, including the irrigation water itself.

The industry believes that the use of smaller signs in greenhouses and nurseries will facilitate posting and worker awareness of areas under the restricted entry interval (REI). In the AAN's view, allowing the use of smaller signs will eliminate the ambiguity and resulting inconsistencies in interpretation between growers and states as to when small signs can be used. The AAN also believes that smaller signs can be equally visible and legible in the small-scale of greenhouses and nurseries, as compared to larger signs on farms and forests.

Some state agencies have requested EPA's review of posting plans to determine whether they are consistent with current rule requirements. For example, the Oregon Association of Nurserymen (OAN) organized a task force with Oregon OSHA and EPA Region 10 to develop a system of posting beds and fields in greenhouses and nurseries. The Oregon plan contained the following conditions: For greenhouse and nursery beds, 5" X 5" signs would be placed at the beds' corners and every 25 feet along the beds

bordering walkways that serve as usual worker entry points. For nursery fields, each field would be posted with a 7" X 8" sign at its corners and every 50 feet along usual worker access routes bordering the field, such as walkways and access roads.

C. Proposal to Allow Smaller Signs in Greenhouses and Nurseries

The Agency believes that use of the 14" X 16" signs may interfere with operations or the clear identification of treated areas in greenhouses and nurseries, particularly in cases where there may be different treatment regimes in close proximity that require separate posting. EPA does not envision that using the standard-size signs would interfere with operations or the identification of treated areas on sod farms, tree nurseries, and nurseries where large fields of nursery stock receive uniform pesticide treatments.

EPA also believes that a minimum-size for smaller signs should be set because such a limitation may be necessary to meet the rule requirement that signs be both visible and legible from usual points of entry to the treated area. EPA considered proposing that signs be posted at specific distances, such as the Oregon plan discussed in Unit IV.B. of this preamble. However, although spacing signs at specific distances could be useful in clearly identifying the treated areas, the Agency is not proposing this requirement. The Agency is concerned that a single

specific distance between signs may not be appropriate for all nursery and greenhouse situations.

EPA is proposing the following for consideration and comment:

In addition to allowing the use of smaller signs when the treated area is too small to accommodate the 14" X 16" sign, EPA proposes to allow smaller signs in greenhouses and nurseries when use of a larger sign may interfere with operations or the clear identification of treated areas. This additional option would not preclude the continued use of a small sign based on spatial limitations, as presently allowed. Also, a minimum size would be set for smaller signs. This minimum size requirement would apply to all uses of small signs, including uses already allowed by the WPS. Further, signs would have to meet all other posting requirements of the rule, including that they be visible and legible during the time they are posted.

The proposed text that would incorporate a performance standard that considers interference with operations or the clear identification of treated areas and a minimum sign size for greenhouses and nurseries is located in the regulatory text of this document.

D. Solicitation of Comments

EPA is interested in receiving comments and information on the proposed option. Specifically, comments are requested on:

1. What are the advantages and disadvantages of amending the WPS in the manner described by this proposal?

2. What are the advantages and disadvantages of proposing a minimum-size sign?

3. What is an appropriate minimum-size requirement for smaller signs? Please provide any available data on the relationship between sign size and worker recognition that entry to the treated area is prohibited.

4. Should EPA require a maximum distance requirement between signs when smaller signs are used (e.g., the Oregon Proposal discussed in Unit IV.B. of this preamble)? If so, what should the distance be?

5. Would commenters prefer a more precise and objective standard, such as permitting the use of a smaller size sign on a smaller plot, e.g., 1/2 acre or less?

6. Should the grower be permitted to handwrite in a substitute language or should a manufactured sign or sticker be required?

V. Public Docket

A record has been established for this rulemaking under docket number "OPP-250107" (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 CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of

Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for the rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically 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. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

VI. Statutory Requirements

As required by FIFRA section 25(a), this proposed rule was provided to the Secretary of Agriculture; the Committee on Agriculture of the House Representatives; and the Committee on Agriculture, Nutrition, and Forestry of the Senate for review. The FIFRA Scientific Advisory Panel waived its review.

VII. 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 not a "significant regulatory action." OMB has waived its review.

Both the proposals to modify the second language requirements on the sign and to allow smaller signs in greenhouses and nurseries are only optional changes to the requirements of the current WPS. This proposed rule, if finalized, would provide non-mandatory options and, therefore, does not increase costs. In the event that either option is chosen, the second language change would be a negligible cost, and the smaller signs change would constitute regulatory relief.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the rule. However, this proposed rule potentially reduces burden and would not require actions which would increase costs. I therefore certify that this proposal does not require a separate analysis under the Regulatory Flexibility Act as it would not have an adverse impact on any small entity.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, EPA has assessed the effects of this regulatory action on State, local, or tribal governments, and the private sector. This action does not result in the expenditure by State, local, and tribal governments in the aggregate or by the private sector of \$100 million or more in any one year.

List of Subjects in Part 170

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

Dated: September 25, 1995.

Carol M. Browner,
Administrator.

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

Part 170—[Amended]

1. The authority citation for part 170 would continue to read as follows:

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

2. In § 170.120, by revising paragraph (c)(2), redesignating existing paragraphs (c)(3) through (c)(7) as (c)(4) through (c)(8) respectively, and adding a new paragraph (c)(3) to read as follows:

§ 170.120 Notice of applications.

* * * * *

(c) * * *

(2) On all use sites, the sign shall be at least 14 inches by 16 inches in size, and the letters shall be at least 1 inch in height unless a smaller sign and smaller letters are necessary, because the treated area is too small to accommodate a sign of this size. In nurseries and greenhouses only, a smaller sign may be used when a 14 inches by 16 inches sign may interfere with operations or the clear identification of the treated area. If a smaller sign is used, under any of the conditions above, it must be at least X inches x Y inches and meet the requirements of paragraph (c)(1) of this section.

(3) The grower may replace the Spanish portion of the warning sign with another non-English language which is read by a majority of workers who do not read English. The replacement sign must be in the same format as the original sign and be visible, legible, and weatherproof.

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[FR Doc. 95-24212 Filed 9-28-95; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 170**

[OPP-250108; FRL-4969-5]

Worker Protection Standard; Decontamination Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Worker Protection Standard (WPS) for agricultural pesticides by modifying the current requirements for decontamination sites for workers. EPA is proposing to shorten the time that decontamination sites are required when certain pesticides are used; all other decontamination provisions are unaffected by this proposal. The objective of the proposed change is to provide flexibility and encourage the use of low-toxicity pesticides, while ensuring that there is no increase in worker risk. EPA is also clarifying existing decontamination requirements so that agricultural employers will better understand their responsibilities under this WPS provision.

DATES: Written comments, data, or evidence must be identified by docket number and should be submitted on or before November 13, 1995.

ADDRESSES: Submit written comments in triplicate to: By mail: Program Resources Section, Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. 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-250108." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VIII. of this document.

Information submitted as a comment concerning this document may be

claimed confidential by marking any part or all of that information as 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.

FOR FURTHER INFORMATION CONTACT: By mail: Joshua First or Allie Fields, Office of Pesticide Programs, Field Operations Division, Certification, Training, and Occupational Safety Branch (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. By telephone: (703) 305-7437 and (703) 305-5391, respectively. By e-mail: first.joshua@epamail.epa.gov or fields.allie@epamail.epa.gov.

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 of the Worker Protection Standard

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 from risks associated with agricultural pesticides. 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. It also included pesticide handlers who mix, load, apply, or otherwise handle pesticides for use at these locations in the production of agricultural commodities. The WPS contains other requirements for training, notification of pesticide applications, use of personal protective equipment, restricted entry intervals, decontamination, and emergency medical assistance.

This proposed WPS amendment is one of a series of Agency actions in response to concerns raised by persons affected by the final WPS rule since its publication in August 1992. In addition to this proposed amendment, EPA will also be publishing a notice soliciting public comment about possible modifications to the requirements for the WPS warning sign.