New Final EPA Worker Protection Rule published in Federal Register on 2 November 2015 and set to go into effect on 1 January 2016.

1 January 2017 is the date when employers must comply with the provisions of the WPS with the exception of the new training content and the implementation of the new exclusion zone requirement.

1 January 2018 (or 180 days after EPA announces the training materials are available, whichever is later) is when the new training curriculum must be implemented and 1 January 2018 is also when the exclusion zone requirement come into force (see the rule published in the Federal Register for exact details: http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2011-0184-2510.

Summary

EPA has finalized updates and revisions to the existing worker protection regulation for pesticides. This final rule will enhance the protections provided to agricultural workers, pesticide handlers, and other persons under the Worker Protection Standard (WPS) by strengthening elements of the existing regulation, such as training, notification, pesticide safety and hazard communication information, use of personal protective equipment, and the providing of supplies for routine washing and emergency decontamination. EPA expects this final rule to prevent unreasonable adverse effects from exposure to pesticides among agricultural workers and pesticide handlers, vulnerable groups (such as minority and low-income populations, child farmworkers, and farmworker families) and other persons who may be on or near agricultural establishments, and to mitigate exposures that do occur. In order to reduce compliance burdens for family-owned farms, in the final rule EPA has expanded the existing definition of “immediate family” and continued the existing exemption from many provisions of the WPS for owners and members of their immediate families.

Dates

This final rule is effective January 1, 2016. Agricultural employers and handler employers will be required to comply with most of the new requirements on January 2, 2017, as provided in 40 CFR 170.2. Agricultural employers and handler employers will be required to comply with certain new requirements on January 1, 2018 or later, as provided in 40 CFR 170.311(a)(3), 170.401(c)(3), 170.501(c)(3) and 170.505(b).

Introduction and Procedural History

The existing WPS was published in 1992 and implemented fully in 1995. Since implementation, EPA has sought to ensure that the rule provides the intended protections effectively and to identify necessary improvements. To accomplish this, EPA engaged diverse stakeholders, individually and collectively through organized outreach efforts, to discuss the rule and get feedback from affected and interested parties. Groups with which EPA engaged included, but were not limited to, farmworker organizations, health care providers, state regulators, educators and trainers, pesticide manufacturers, farmers, organizations representing agricultural commodity producers and crop advisors. EPA engaged these groups formally through the National Assessment of the Pesticide Worker Safety Program (http://www.epa.gov/pesticides/safety/workshops.htm), public meetings (e.g., National Dialogue on the Worker Protection Standard), federal advisory committee meetings (e.g., Pesticide Program Dialogue Committee, http://www.epa.gov/pesticides/ppdc/) and a Small Business Advocacy Review Panel (Ref. 3). EPA also engaged stakeholders informally, as individual organizations and in small groups.
Using feedback from stakeholders, along with other information, EPA developed proposed changes to the WPS and published them for public comment (Ref. 2). EPA received substantial feedback on the proposal, including about 2,400 written comments with over 393,000 signatures. Commenters included farmworker advocacy organizations, state pesticide regulatory agencies (states) and organizations, public health organizations, public health agencies, growers and grower organizations, agricultural producer organizations, applicators and applicator organizations, pesticide manufacturers and organizations, PPE manufacturers, farm bureaus, crop consultants and organizations, and others. The comments received covered a wide range of issues and took diverse positions. Overall, the comments were thoughtful and demonstrated a high level of interest in ensuring the protection of workers and handlers, while minimizing burden on employers and regulatory agencies. This document discusses some of the significant comments received and EPA's responses. A full summary of comments received and EPA's responses are available in the docket for this rulemaking (Ref. 4).

While considering stakeholder feedback and suggestions in developing the final rule, EPA also gathered additional information, such as updated demographic information for farmworkers, new data from the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service, information on other federal rules (e.g., respirator standards, anti-retaliatory provisions), and more recent data on incidents related to occupational pesticide exposure in agriculture. EPA reviewed the methodology used to estimate the number of acute pesticide-related incidents in agriculture and used the updated information to revise the estimated number of incidents that could be prevented under the final rule. EPA also revised the Economic Analysis for the final rule to include more recent information from the National Agricultural Statistics Service and with input from public comments.

Executive Summary

A. What is the Agency's authority for taking this action?

This action is issued under the authority of sections 2 through 35 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136-136y, and particularly section 25(a), 7 U.S.C. 136w(a).

B. What is the purpose of the regulatory action?

EPA is revising the existing Worker Protection Standard (WPS), 40 CFR part 170, to reduce occupational pesticide exposure and incidents of related illness among agricultural workers (workers) and pesticide handlers (handlers) covered by the rule, and to protect bystanders and others from exposure to agricultural pesticide use. This regulation, in combination with other components of EPA’s pesticide regulatory program, is intended to prevent unreasonable adverse effects of pesticides among workers, handlers and other persons who may be on or near agricultural establishments, including vulnerable groups, such as minority and low-income populations.

C. What are the major changes from the proposal to the final rule?

This final rule revises the existing WPS. In regard to training, the final rule retains the proposed content expansions (including how to protect family members and reduce take-home exposure) and the requirement for employers to ensure that workers and handlers receive pesticide safety training every year. Employers are required to retain records of the training provided to workers and handlers for two years from the date of training. The final rule eliminates the training “grace period,” which allowed employers to delay providing full pesticide safety training to workers (for up to 5 days under the existing
rule and for up to two days under the proposal) from the time worker activities began, if the workers received an abbreviated training prior to entering any treated area.

In regard to notification, the final rule retains the proposed requirements for employers to post warning signs around treated areas in outdoor production when the product used has a restricted-entry interval (REI) greater than 48 hours and to provide to workers performing early-entry tasks, i.e., entering a treated area when an REI is in effect, information about the pesticide used in the area where they will work, the specific task(s) to be performed, the personal protective equipment (PPE) required by the labeling and the amount of time the worker may remain in the treated area. The final rule does not include the proposed requirement for employers to keep a record of the information provided to workers performing early-entry tasks. The final rule retains the existing requirements concerning the sign that must be used when posted notification of treated areas is required.

In regard to hazard communication, the final rule requires employers to post pesticide application information and a safety data sheet (SDS) for each pesticide used on the establishment (known together as pesticide application and hazard information) at a central location on the establishment (the “central display”), a departure from the proposal to eliminate the existing requirement for a central display of pesticide application-specific information. The final rule also requires the employer to maintain and make available to workers and handlers, their designated representatives, and treating medical personnel upon request, the pesticide application-specific information and the SDSs for pesticides used on the establishment for two years. The final rule does not include the proposed requirement for the employer to maintain copies of the labeling for each product used on the establishment for two years.

In regard to protections during pesticide applications, the final rule designates the area immediately surrounding the application equipment as the area from which workers and other persons must be excluded. This “application exclusion zone” differs from the proposed “entry-restricted areas,” which would have extended a specified distance around the entire treated area during application based on the application equipment used. The final rule requires handlers to suspend application, rather than cease application, if they are aware of any person in the application exclusion zone other than a properly trained and equipped handler involved in the application.

In regard to establishing a minimum age for handlers and workers performing early-entry tasks, the final rule requires that handlers and workers performing early-entry tasks be at least 18 years old, rather than the proposed minimum age of 16 years old. This minimum age does not apply to an adolescent working on an establishment owned by an immediate family member. The final rule does not require the employer to record workers’ or handlers’ birthdates as part of the training record, but does require the employer to verify they meet the minimum age requirements.

In regard to PPE, the final rule cross-references certain Occupational Safety and Health Administration's (OSHA) requirements for respirator use that employers will be required to comply with, i.e., fit test, medical evaluation, and training for handlers using pesticides that require respirator use. The final rule expands the respirators subject to fit testing beyond the proposal to include filtering facepiece respirators. The final rule maintains the existing exception from the handler PPE requirements when using a closed system to transfer or load pesticides, and adopts a general performance standard for closed systems, which differs from the specific design standards based on California's existing standard for closed systems discussed in the proposal.
EPA has prepared an economic analysis (EA) of the potential impacts associated with this rulemaking (Ref. 1). EPA expects no significant impact on a substantial number of small businesses. The rule will affect over 295,000 small farms, nurseries, and greenhouses, and commercial entities that are contracted to apply pesticides. EPA expects the impact will be less than 0.1% of the annual value of sales or revenues for the average small entity. The rule will have a negligible effect on jobs and employment with the marginal cost of a typical farmworker expected to increase $5/year and the marginal cost for a more skilled pesticide handler expected to increase by $50 per year, which is less than 0.2% of the cost of a part-time employee.

General Information

A. Does this action apply to me?

You may be potentially affected by this action if you work in or employ persons working in crop production agriculture where pesticides are applied. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agricultural Establishments (NAICS code 111000), e.g., establishments or persons, such as farms, orchards, groves, greenhouses, and nurseries, primarily engaged in growing crops, plants, vines, or trees and their seeds.

- Nursery and Tree Production (NAICS code 111421), e.g., establishments or persons primarily engaged in (1) growing nursery products, nursery stock, shrubbery, bulbs, fruit stock, sod, and so forth, under cover or in open fields and/or (2) growing short rotation woody trees with a growth and harvest cycle of 10 years or less for pulp or tree stock.

- Timber Tract Operations (NAICS code 113110), e.g., establishments or persons primarily engaged in the operation of timber tracts for the purpose of selling standing timber.

- Forest Nurseries and Gathering of Forest Products (NAICS code 113210), e.g., establishments or persons primarily engaged in (1) growing trees for reforestation and/or (2) gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.

- Farm Workers (NAICS codes 11511, 115112, and 115114), e.g., establishments or persons primarily engaged in providing support activities for growing crops; establishments or persons primarily engaged in performing a soil preparation activity or crop production service, such as plowing, fertilizing, seed bed preparation, planting, cultivating, and crop protecting services; and establishments or persons primarily engaged in performing services on crops, subsequent to their harvest, with the intent of preparing them for market or further processing.

- Pesticide Handling on Farms (NAICS code 115112), e.g., establishments or persons primarily engaged in performing a soil preparation activity or crop production service, such as seed bed preparation, planting, cultivating, and crop protecting services.

- Farm Labor Contractors and Crew Leaders (NAICS code 115115), e.g., establishments or persons primarily engaged in supplying labor for agricultural production or harvesting.
• Pesticide Handling in Forestry (NAICS code 115310), e.g., establishments or persons primarily providing support activities for forestry, such as forest pest control.

• Pesticide Manufacturers (NAICS code 325320), e.g., establishments primarily engaged in the formulation and preparation of agricultural and household pest control chemicals (except fertilizers).

• Farm Worker Support Organizations (NAICS codes 813311, 813312, and 813319), e.g., establishments or persons primarily engaged in promoting causes associated with human rights either for a broad or specific constituency; establishments or persons primarily engaged in promoting the preservation and protection of the environment and wildlife; and establishments primarily engaged in social advocacy.

• Farm Worker Labor Organizations (NAICS code 813930), e.g., establishments or persons primarily engaged in promoting the interests of organized labor and union employees.

• Crop Advisors (NAICS codes 115112, 541690, 541712) e.g., establishments or persons who primarily provide advice and assistance to businesses and other organizations on scientific and technical issues related to pesticide use and pest pressure.

B. What action is the Agency taking?

EPA is finalizing changes to the WPS. The WPS is a regulation primarily intended to reduce the risks of injury or illness resulting from agricultural workers' and handlers' use and contact with pesticides on farms, forests, nurseries and greenhouses. The rule primarily seeks to protect workers (those who perform hand-labor tasks in pesticide-treated crops, such as harvesting, thinning, pruning) and handlers (those who mix, load and apply pesticides). The rule does not cover persons working with livestock. The existing regulation has provisions requiring employers to provide workers and handlers with pesticide safety training, posting and notification of treated areas, and information on entry restrictions, as well as PPE for workers who enter treated areas after pesticide application to perform crop-related tasks and handlers who mix, load, and apply pesticides.

The final rule takes into consideration comments received from the public in response to the proposed rule, as well as additional information such as reported incidents of pesticide-related illness or injury.

EPA believes that the changes to the WPS offer targeted improvements that will reduce risk through protective requirements and improve operational efficiencies. Among other things, EPA expects the changes to:

• Improve effectiveness of worker and handler training.

• Improve protections to workers during REIs.

• Improve protections for workers during and after pesticide applications.

• Expand the information provided to workers, thus improving hazard communication protections.

• Expand the content of pesticide safety information displayed to improve the display's effectiveness.

• Improve the protections for crop advisor employees.

• Increase the amounts of decontamination water available, thus improving the effectiveness of the decontamination process.
• Improve the emergency response when workers or handlers experience pesticide exposures.

• Improve the organization of the WPS, thus making it easier for employers to understand and comply with the rule.

• Clarify that workers and handlers are covered by the rule only if they are employed, directly or indirectly, by the establishment (i.e., receiving a salary or wage).

• Protect adolescents by establishing a minimum age for handlers and for workers who enter a treated area during an REI, but adding an exemption to the minimum age requirement for adolescents who work on an establishment owned by an immediate family member.

• Improve flexibility for small farmers and members of their immediate family by expanding the definition of immediate family members to be more inclusive and retaining the exemptions from almost all WPS requirements for owners and their immediate family members.

EPA estimates the incremental cost of the revisions to the WPS to be between $60.2 and $66.9 million per year. The majority of the costs, $53.0 to $62.2 million per year, are borne by farms, nurseries, and greenhouses that hire labor and use pesticides, which account for about 20 percent of all farms producing crops in the United States. The approximately 2,000 commercial pesticide handling establishments, which are contracted to apply pesticides on farms, may collectively see an incremental cost of about $1.9 million per year. Family-owned farms that use pesticides and do not hire labor may collectively bear costs of about $1.4 million per year. Total costs amount to an average expenditure of about $30 per year per farm worker. Benefits, in terms of reduced illness from exposure to pesticides, are likely to exceed $64 million per year in terms of avoided costs associated with occupational pesticide incidents and with reductions in chronic diseases associated with occupational pesticide exposure, although the amount EPA can quantify is much less. The estimated quantified benefits from reducing acute worker and handler exposure to pesticides total between $0.6 million and $2.6 million annually.