

III. Summary of the Final Rule Amendment

The Agency is revising 40 CFR 170.130(a)(3) to require that basic pesticide safety information be provided to workers before entry. New §170.130(a)(3)(iii), the exception for the first 5-year period, allows a 15-day grace period until January 1, 1996. The Agency is thereby accelerating the transition to a 5-day grace period by approximately 2 years.

The Agency is adding a new paragraph § 170.130(c) and redesignating existing paragraphs to specify the content by including a reference to new paragraph (c). The Agency has decided to retain the 5-year retraining interval in § 170.130(a)(1). No other sections of the training provisions are affected by this final action.

IV. Summary of Response to Comments

EPA received 91 comments referring to the pesticide safety training proposal from farm worker groups, individuals, State, commodity groups, and growers. Many comments from farmworker groups were supportive of eliminating a grace period provision and requiring retraining annually. Comments from commodity groups, growers and State Departments of Agriculture expressed concern regarding eliminating a grace period and supported maintaining a grace period and a longer retraining interval. A more detailed summary of the issues addressed by comments is presented below and in the Response to Comments document contained in the public docket.

A. Grace Period and Interim Grace Period

EPA proposed several options: eliminating the grace period (from the current 15 days to 0 days) after 1 year; shortening the grace period from 15 days to between 1 and 5 days; or establishing a weekly training program for those requiring training.

Comments, received primarily from farmworker groups, opposed a grace period of any length stating that training prior to potential exposure would provide greater protection for workers. Other industries which require worker training before potential exposure were cited as examples of how a 0-day grace period could be feasible in agriculture. Comments also stated that a grace period can create greater administrative cost and difficulty with enforcement given diverse crop production practices and high worker turnover.

Growers and many States noted that a training grace period is necessary to cope with unanticipated circumstances

that might require hiring large numbers of workers to harvest a crop quickly, for example, and with no time or capacity to train them. Additionally, the U.S. Department of Agriculture (USDA) and others pointed out that the training provisions are supplemental to other WPS provisions, such as central posting, that are intended to prevent or mitigate worker exposure to pesticides and that WPS training is not the primary means to avoid such exposure. USDA comments noted that WPS training is valuable reinforcement for the other WPS protections; however the existence of other methods of risk prevention and mitigation reduces the urgency for workers to have had training prior to the commencement of work at each new job.

Some comments also supported making training available on a weekly basis for similar reasons discussed above, emphasizing the benefit of flexibility, the ability to absorb training costs, and the ability to plan training sessions based on hiring needs and practices. In addition to the options proposed, several comments supported alternative grace period options or providing an orientation session covering basic pesticide safety information before a new employee begins work. The more complete WPS pesticide safety training program would follow.

EPA believes the WPS is comparable, in large measure, to requirements in other industries for training prior to exposure to hazardous chemicals. Pesticide handlers and early-entry workers must be trained prior to applying pesticides or entering treated areas during the restricted-entry interval (REI). The current training grace period applies only to agricultural workers who do not handle pesticides but may be exposed to pesticide residues after the REI. Prior to or in the absence of the worker training, the REI serves its intended purpose of limiting agricultural workers' exposure to pesticides by prohibiting routine early entry to pesticide-treated areas.

EPA agrees that providing training before potential exposure would be more protective than after potential exposure, and that such a requirement would be easier to enforce. EPA strongly recommends that all agricultural employers provide the full WPS pesticide safety training to workers before they are allowed to enter pesticide treated areas on the establishment. However, EPA acknowledges that, given the diversity of agricultural operations across the United States, a training grace period may be needed to provide flexibility to

agricultural establishment owners and will likely reduce administrative and compliance costs. EPA believes, that under some circumstances, without a grace period, agricultural employers may be in the position of needing to provide daily training during busy harvest periods. Daily training (estimated to take 30 to 40 minutes at a minimum), along with the need to hire a translator in some cases, could mean a significant loss in time, increase in cost and loss of agricultural productivity. Notwithstanding, EPA believes that it is feasible to provide basic safety information before untrained workers enter treated areas without compromising the flexibility afforded by a 5-day grace period.

Effective January 1, 1996, EPA is requiring that all agricultural employers assure that untrained workers receive basic pesticide safety information before they enter a pesticide treated area on the establishment. The agricultural employer must assure the basic pesticide safety information is communicated to agricultural workers in a manner they can understand (e.g., by providing written materials, handouts, posters, or oral communication or by other means). Employers must be able to verify that they have complied with this requirement. EPA recommends a system which involves employee signature acknowledging receipt of the required information. Other verifiable means of showing compliance would be acceptable. EPA will develop and distribute, in cooperation with USDA and States, a model handout that will contain the basic pesticide safety information to satisfy this requirement. Agricultural employers can use this particular handout, develop their own, or use other materials that contain the basic pesticide safety information required by this rule. No more than five days after initial employment has commenced, all agricultural workers must receive complete WPS pesticide safety training before they enter pesticide treated areas.

A few comments specifically addressed the issue of when the 15-day grace period should expire. Some comments supported keeping the 15-day grace period until October 20, 1997, while others preferred ending the 15-day grace period after 1 year. EPA believes that a year (from implementation) is sufficient time to enhance training programs, acquire training materials and identify translators in the necessary languages. A lengthy (about 2 years) lead time was provided before the training provisions of the 1992 rule were enforceable. The