

Appendix B:

Written Comments Submitted by Small Entity Representatives

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Small Business Advocacy Review Panel on EPA's Planned Proposed Rules

Worker Protection Standard for Agricultural Pesticides and Certification of Pesticide Applicators

B1: Written Comments from Potential Small Entity Representatives following the 06/30/2008 Pre-panel Outreach Meeting

## Questions for Potential Small Entity Representatives to help us estimate the impact of potential new requirements the Agency is considering

### Certification Rule

Adding certification categories for commercial applicators:

1. Does your state already have the four categories that the Agency is considering adding? Washington does not have an Aerial Category.
2. If not, and you needed to be certified in one of these categories, what is your estimate of the time it will take to travel to the certification exam and take it? I would support Washington State to adopt the Aerial Category and exam in hopes that reciprocity would be granted to established business. I would like to be able to bring in help in the event of a temporary increase in workload e.g. cereal leaf beetle. In my opinion, reciprocity should only be granted to Pilots working for established businesses.
- 2.

Formatted: Bullets and Numbering

Applicator minimum age:

1. Of those applicators that apply Restricted Use Pesticides (RUPs) for your business, or others you know of, what is the minimum or youngest age of those applicators? This includes commercial applicators, private applicators, and anyone applying RUPs under the supervision of a commercial or private applicator. A comercial pilots license requires a minimum age of 18.
2. If a minimum age for an applicator is imposed, how would that impact your type of operation? The existing minimum age (18) would have no impact.

Applying RUPs under the supervision of Certified Applicators:

1. Do you, or others you know of, employ applicators that are not certified and that apply RUPs under the supervision of a certified applicator? Not for Aerial.
2. If yes, how many? None.
3. With respect to the requirements for supervision by the certified applicator:
  - a. how close is supervisor to the application area?
  - b. does supervisor communicate with the applicator at the application site? How?
  - c. is training provided for non-certified applicators?
  - d. if a means of instant communication between supervisor and applicator were required, how would you do it (for example, walkie talkie, cell phone). Would this be an additional cost for your business?

### Worker Protection Standard

Training:

1. There is currently a 5 day grace period before workers have to be trained. If the grace period were reduced or eliminated, what would be the cost to employers? I think the 5 day grace period works. I have annual and recurrent training depending on workers tasks. Business owners should have the flexibility to provide the training needed and not required. L&I, in WA, already has rules in place to protect workers. Any additional requirements could place detrimental liabilities on employers.
2. Currently, workers must be trained every 5 years. If this were reduced, would you have to train more frequently, or do you already train every year because of worker turnover, difficulty in verifying previous training, etc.? See above.
3. When workers are hired, can it be determined if they have been trained, or would most just train them anyway? Every new hire needs training for company policy.
4. Who does your training (eg., you, hired professional trainer, extension service)?
5. Do you have a difficult time finding trainers? Owner or employee.

#### Restricted Entry Intervals (REI):

1. If you had to post in the field a standard warning notice (reusable sign, not specific to the pesticide) for each application in each field:
  - a. how long would it take for each posting? Could now effectively implement this for aerial without detrimental costs.
  - b. how many times would you have to post in a year, on average? Unknown.
  - c. How much time would it add if you had to record the name of the pesticide and the expiration of the REI on the sign? Grower responsibility.
2. How many times per year do you utilize the exceptions to REIs, to allow early entry? As an aerial applicator, I don't go into fields after spraying.

#### Application entry restricted area:

1. What impact would the requirement of a no-entry zone around fields during application have on you? None

#### Hazard Communication:

1. How do you know if your workers are following safety precautions related to pesticide use such as using PPE properly, and practicing post-exposure hygiene? Observation.
2. How much burden would it be for you to maintain a file with each pesticide MSDS and make them available for workers upon request? None
3. If an MSDS for each pesticide used was required to be posted and available to all at anytime, how much additional burden would it add? In my company, MSDS sheets are available but not posted. Posting would only be done prior to an inspection if required (sorry ☹)



Joe Hogue/DC/USEPA/US  
07/07/2008 11:52 AM

To JoanB Rogers/DC/USEPA/US@EPA, Caryn  
Muellerleite/DC/USEPA/US@EPA, Bill  
Diamond/DC/USEPA/US@EPA, Carolyn  
cc  
bcc  
Subject Comment from one SER - forwarded

FYI

Thanks,

Joe Hogue  
EPA, Office of Pesticide Programs  
FEAD/PRSB (7506C)  
phone: Tues, Wed, Thurs > (703) 308-9072  
Mon. & Fri. > (804) 448-8027

----- Forwarded by Joe Hogue/DC/USEPA/US on 07/07/2008 11:50 AM -----



"Kenny Crenshaw"  
<kcrenshaw@herbi-systems.com>  
06/30/2008 04:33 PM

To Joe Hogue/DC/USEPA/US@EPA  
cc  
Subject RE: Follow-up to today's conference call with SERs

Joe,

Great conference call. Thanks for doing such a great job moderating. It looks like to me that most of what EPA is wanting to do is already being done by many if not most of the states. I do have some concerns and I will get that to you via email soon.

Thanks also for inviting the guys from Office of Advocacy. I get their newsletter and see the great work they do on behalf of small businesses.

Kenny Crenshaw

-----Original Message-----

From: Hogue.Joe@epamail.epa.gov [mailto:Hogue.Joe@epamail.epa.gov]  
Sent: Monday, June 30, 2008 3:26 PM  
To: cvh@centralvalleyheli.com; reedfly@aol.com; jhester@nicholsag.com; bilihun@spraytec.com; aaveritt@earthlink.net; dennisb@tvutel.com; cfemling@aol.com; elmst002@umn.edu; webbfarm@netzero.net; rmatoian@westernpistachio.org; dasherfarm@alltel.net; rmetzler@pearsonrealty.com; whjrr30@aol.com; richard@arbor-nomics.com; kcrenshaw@herbi-systems.com; lonniealonso@ColumbusPestControlinc.com; anne@royalpest.com; bruce@csipest.com; jackmarlowe@edenpest.com; mwright@woodpreservers.com  
Cc: Rogers.JoanB@epamail.epa.gov  
Subject: Follow-up to today's conference call with SERs

Hello again SERs:

Thanks to everyone who was on the call today, for not only taking the time, but for voicing your opinions and sharing your experiences. I realize that with a group this large, not everyone is able to participate on a given date & time. Those who were unable to participate today can do so by sending me their written comments.

We'd like to have an accurate record of everyone who participated today. We listed the names of those who introduced themselves at the beginning of the call. However, as some may have joined the call after introductions, or we may have missed a name, I'd like to confirm your participation. The names we listed were:

Ron Cline  
John Hester  
Frank Femling  
Clint Webb  
Richard Matoian  
Randall Dasher  
Dick Bare  
Kenny Crenshaw  
Lonnie Alonso  
Bruce Carter  
Jack Marlowe  
Morgan Wright

If you were on the call today, and your name is NOT listed above, please respond to let me know so I can add your name (and I apologize for the oversight).

We took notes on your comments today, but it was difficult to keep up with everything from everybody. Please remember to send your written comments. This will ensure that your comments are captured accurately, and also give you a chance to add to your verbal comments.

Thanks,

Joe Hogue  
US EPA/OPPTS (7506-P)  
1200 Pennsylvania Ave. NW  
Washington, DC 20460  
Phone: (703) 308-9072  
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Email: hogue.joe@epa.go

**"Locally owned and operated since 1984"**

July 11, 2008

Joe Hogue  
EPA, Office of Pesticide Programs  
FEAD/PRSB (7506C)

Dear Mr. Hogue:

Thank you for requesting comments from a variety of small business entities. I appreciate the EPA's diligence in following the guidelines laid out in the Regulatory Flexibility Act. It seems from the conference call on June 30, 2008 that EPA brought together a broad cross section of pesticide applicators who will be affected by new WPS regulations and certification standards.

Those of us in small business have been left out of the process of developing regulations for far too long. Following the RFA will help EPA promulgate regulations that are both sensible and effective. I look forward to this new direction.

Generally I am in agreement with the new standards for certifying commercial and private applicators of restricted use products. I am concerned, however, with parts of the proposed new WPS.

Following are some comments on the proposed rules for Certification of pesticide applicators and the Worker Protection Standard.

I am in agreement with requiring a minimum age for commercial applicators as long as it is not above 14. Many of us operate small family businesses and we rely on family help. Many 14 year olds are very responsible, and if they can pass the test they should be allowed to make a commercial application. I have five children who I hope to use in my business. I cannot put a monetary value on the hardship it would place on my business. I just hope you will set the age sufficiently low until there is some reason to raise it.

The 4 new categories will not have any effect on my small business.

Reducing the re-certification interval to 3 years would have no effect on us since every state we work in already requires re-certification every three years. Three years is a reasonable interval.

**"Lemme kill your weeds."®**

I am enthusiastically in agreement with the proposed requirements for administration of commercial applicator exams. The tests should be written, proctored, closed-book, and positive ID required. The exams should also be in ENGLISH ONLY. As long as English is the language of this country, the tests should be in English. Even if the applicator is competent in another language, English is what is likely to be spoken by regulators, emergency personnel, and doctors.

I think that Tennessee is generally in line with these new standards in already. We also operate in Arkansas. That state is an entirely different story. They do not have a written test for certification. It is very difficult and expensive to go through their certification process, as it requires classroom training, and so many hours in-the-field training. We have technicians with 10 plus years experience who can easily pass a certification test, but if they begin to work in Arkansas they must go through the training process from the beginning. Without a test there is no way to make sure someone knows the material. I agree with written, proctored, closed-book and positive identification. If the new standards were put into place it would actually lower our burden in Arkansas.

I am also in agreement that individuals applying restricted use pesticides under the supervision of a certified applicator should have some bare minimum of training or be in the presence of the certified applicator. With some level of training the distance between the certified applicator and the non-certified applicator might be increased. Also, "under direct supervision" needs to be better defined.

We currently carry copies of all labels used. One concern, however, is the number of generic products used in our business. We might possibly use 10 different brands of glyphosate in one year. There should be a provision that the labels should be "essentially the same". In other words, if we are using Gly-4 instead of Roundup today, the Roundup label should suffice for the label carried. Otherwise, having to carry labels for every generic glyphosate and 2,4-D type products will be a huge burden and will possibly put our applicators at risk of citation for no good reason. I cannot calculate a cost, except to say that it would be very difficult to carry labels for as many as a dozen generic products for each active ingredient. We might possibly have to carry between 100 and 200 labels to make sure that we are in compliance,

One comment on REI's. Since we are not doing any work that requires REI's, the new standards will not affect us. BUT, if the REI's were to be expanded to lawn care, industrial, ROW, and similar areas, it would cripple our business and not provide any further level of safety to the public. REI's should not be expanded to cover any areas that are not likely to have people handling the treated crops.



The biggest concern I have is with the proposed elimination of the substitution of an enclosed cab for labeled respirator equipment. This would absolutely destroy our roadside herbicide application business. We use some products, that for some odd reason, and on some labels, require a respirator. It would be unreasonable, ridiculous, and dangerous to require a spray technician in a truck cab to wear a respirator. This requirement is so ridiculous as to defy common sense. The spray is directed away from the vehicle, the droplets are large, and there is no drift. The vehicle is not turning around and traveling through the spray. If this requirement were adopted, depending on what labels require a respirator, we could lose hundreds of thousands of dollars in business. We cannot require a person driving a truck for 10-12 hours a day to wear a respirator. I hope EPA will re-think this regulation change.

I think it may be useful to discuss respirators in general. The problem mainly lies in EPA requiring a respirator for products that are nearly harmless, and when diluted, become 100 to 1000 times less harmful even than that. In the last couple of years I have seen a respirator requirement for diuron and MSMA. There is absolutely no reason for this. These products have been used for decades with an excellent safety record. Diuron is even labeled for use in catfish ponds and home aquariums. Under conditions that are common to their use, I would dare say that not even a detectable amount of the product reaches the nostrils of the applicator. Spray equipment has evolved by leaps and bounds to the point where drift is rarely a problem.

There should never be a respirator required for products as safe as MSMA and diuron. This casts doubt in the mind of the applicator as to the whole process of the WPS. Respirators should be reserved for products that pose some real risk to the applicator. If EPA adopted a reasonable standard for the requirement of a respirator, we would never need one, and the enclosed cab exemption would be moot.

I think it is safe to say that pesticides generally in use in America, with the exception of some very toxic insecticides, are very safe. We have been in business for 24 years, with several hundred thousand hours logged. We have never had even a first aid incident with a pesticide.

Thank you again for the opportunity to comment.

A handwritten signature in black ink, appearing to read 'Kenny Crenshaw', written in a cursive style.

Kenny Crenshaw  
President

Subject: Response to WPS Changes

Certification Role:

Minnesota does not have the 4 categories, however, the DNR certifies for chemigation. The time to travel and take the test is minimal, maybe 3 hours.

Competency:

Other than farm owner's children, I think the child protection act sets the minimum age for hazardous jobs at age 18. For farm owner's children: They should be able to be certified at any age, as soon as they can pass the required test. As for Commercial applicators: For their children, maybe age 16 would be a compromise. My son passed certification at about age 16 for private certification. Establishing requirements for commercial applicators is a good thing in the subcategories. The Private applicators test should have some closed-book parts that they should know but some open book parts (maybe on how to calibrate sprayer or other areas that might only be used infrequently.)

Instant communication for applying RUP's by non-certified workers under supervision: We feel it may need an exemption in some extreme remote areas where radios or cell phones wouldn't have instant communication capabilities available to them. In non-remote areas, it is a cost, but compared to other costs, we feel the safety factor for employees, if an accident happens, is worth it. We feel it is a good business practice to have communication with just about everyone, if something happens, the appropriate people can be notified immediately. Our insurance company agrees. It helps keep negligence claims to a minimum. Age requirements for applying RUP's, under the supervision of a certified applicator, should be same as Private applicators. Other than more rules and bureaucracy to follow, which no one likes, we don't see a problem with the other rule changes that are proposed.

To improve effectiveness of worker training:

Reducing the retraining period would have a minimal effect on most of our growers. Everyone I talked to trains every year because of worker turn over. I don't see a cost issue by eliminating the grace period, but I feel that eliminating the grace period is a bad idea. The first day or two on the job the new employee has to learn the job, fields, farm and many other things. I think by waiting a few days before training, the worker retains more knowledge by not being so overwhelmed the first few days. On our farm, my wife and son are the trainers. On the other farms that I talked to, the owners or owner's adult children were the trainers.

Improved protection for workers in REI's:

Improving workers protection on REI is one of the most difficult areas of change. Our farm and none of the other growers I spoke with have had to utilize the exceptions to REI's. Posting multiple signs is very time consuming, especially when trying to get multiple sprays on several crops (small areas of one crop next to small areas of another crop.)

One grower suggested the following as an alternative to the posting of multiple signs: Create a field restriction map at the worker check in point. Number the fields with highly visible signs to match the field restriction map. The fields being sprayed would then be marked on the map at the check in point as well as having a red flag in the REI

field on the highly visible number sign. The workers would be required to initial a form each day stating that they looked at the map to see which field they could not enter. There could also be a color coded system for different colored flags if necessary and the workers could all be trained not to enter these flagged fields. Another idea would be to exempt the posting rules for small farms if all workers are certified applicators and are notified at the time of spraying. Posting multiple signs with different REI will be a major time and economic hardship and I think it needs to be thought through and discussed more before changing. We feel it is the supervisor's job to keep workers out of the fields that have REI's and how to make the supervisors accountable needs to be discussed.

There would be little impact of a requirement of a no-entry zone around fields that are being sprayed as long as the distance required is reasonable. We growers are doing that already, no one wants to have spray drift onto employees.

It is always a burden to maintain files and have them available upon request. It is one more thing to try to keep up to date that takes time from other things that need to be done. It will be a major burden when the inspector shows up and you haven't had the time to keep it up to date for new products you are using. If implemented, a more reasonable notification process or grace period would need to be put in place. Of all the growers I spoke with, none of them has had an employee ask for a MSDS. I don't know of many employees that know what a MSDS is.

Requiring a shower and changing area for handlers would be a major burden on small growers and I don't think the employees would use it. I know I wouldn't if I was an employee. I wouldn't use one now as an owner. I come home after spraying and leave my jeans and shirt by the door to go in and wash and take a shower. My clothes are then properly laundered. We realize the goal of this change is to minimize the exposure of chemicals at home. We feel that it is best done by properly training the handlers on how to minimize chemical exposures at home.

A lot of products sprayed do not require the use of a respirator while spraying. If the products do require a respirator then we agree that the enclosed cab should be required to meet filtering standards. If filtering standards cannot be met on the enclosed cab then a respirator must to be used while in the enclosed cab.

Requiring medical monitoring and fit testing for all handlers would be a major burden on small growers and should be discussed more in depth if it is going to be required. The costs involved can be quite expensive for a small grower to sustain.

All of the growers that I spoke with want to emphasize that keeping the paperwork to a minimum is a priority for us. Record keeping is one of our greatest burdens. We realize that record keeping is necessary for the safe operation of the farm but we also only want what is essential to keep workers safe.

Sincerely,

Frank Femling  
Afton Apple Orchard  
[cfemling@aol.com](mailto:cfemling@aol.com)

Joe,

As requested, I am sending comments from the meeting in written form.

I am a Pest Management Company operating in Washington State. So my comments are targeted to the certification issue. In general, the proposed changes already exist as state requirements so I do not see any extra burden. I do believe that 18 is a good minimum age although I could see some apprentice program where 16 would be allowed, although not to work alone. I am in favor of certification standards as I believe they are critical for not only worker and public safety, environmental protection, but also for the overall professionalism of our industry.

One suggestion, when requiring testing, there needs to be provisions for continued review of the tests. Many of our tests in Washington are extremely outdated, referencing materials that are no longer legal and methods that do not represent current practices so that the testing is a necessary evil for new employees, but does not in any meaningful way prepare them for the job. I am sure they did twenty years ago. When we confront the state agency responsible, they say there isn't funding to go through the process of developing new tests.

Hope that was helpful.

Jack Marlowe  
Eden Advanced Pest Technologies

July 14, 2008

Joe Hogue  
US EPA/OPPTS (7506-P)  
1200 Pennsylvania Ave N.W.  
Washington, D.C. 20460

Dear Mr. Hogue;

As a member of the Small Entity Representative regarding the impact of potential new requirements to the Agency regarding Ag Worker Protection Standards, I will respond to both the PowerPoint presentation and the written questions that were presented to us. I have the following thoughts:

From PowerPoint Slides:

I understand the need for additional training for fumigation, chemigation and aerial application, but don't quite understand the need for compound 1080 and M-44. Those baits do not pose a risk for human risk for application, whereas the other compounds have a acute toxicity level that should require additional training.

Regarding minimum age, I would have to disagree with many of the Small Entity Representatives (SER's) that were on the conference call that did not believe that a minimum age should be established. I could foresee a large PR nightmare if a worker were to get sick and it be determined that a 14 year old was responsible for the sickness. Rather, I believe a minimum age of between 16-18 should be established for commercial applicators. I would also agree with the prescribed method for testing, as outlined.

However, regarding private applicators, I believe a minimum age of 16 is appropriate. Regarding, ensuring competency of non-certified applicators applying Restricted Use Pesticides (RUP) under the supervision of a certified applicator, I agree with all the proposed standards, but would want to see some leniency regarding possession of the label. We are allowed to have the label within a reasonable distance of the application site, but not to be carried on the applicator's person.

Regarding improving protections to workers from Restricted Entry Intervals (REI), oral and written notification in my mind is not feasible. You cannot foretell who will be entering a given treated field, nor can you guard the field. Rather, posting for only Restricted Use Pesticides, or other materials that may have a high dermal exposure makes sense. In our table grapes, we can spray up 3 times per month for approximately a 4 month period, and during our gibberlic acid spray period, we are literally spraying every 4 days for about three weeks. Such oral and written notifications would take up to 1 hour per each spray performed to notify every possible person that COULD enter that field before the end of the REI. As a small business employer, I do not have the time to inform in such a manner. Rather, place the requirement where it belongs, on Restricted

Use Pesticides instead, and place a reasonable posting requirement on that field....at the very least on each possible entry point and on each corner.....no more than that.

Also requiring a shower and changing area seems unreasonable. I do not have a shower facility on my properties, but rather a metal shed, hoses and electricity. Placing a requirement for a shower would be an undue requirement for me and could cost me in the tens of \$1,000 for each ranch site that I have, especially those that do not have water or electricity nearby. Rather, the use of PPE for handlers, mixer loaders would make more sense. We give our handlers a Tyvek suit when they mix and load.

Cholinesterase testing restrictions were not very clear. Therefore, it was somewhat difficult to address. Regarding eliminating closed cabs.....this to me appears to be the best protection against drift. If the issue is the filtration system, encourage the manufacturers to develop new, better filters that provide some protection, or require some filter overwrap that provides the needed protection, but please do not eliminate closed cabs. It is the cheapest, quickest way to protect those who apply materials.

From Written questions:

Applying RUP's under supervision: yes, a supervisor should be somewhat close, but I am more concerned with the ability to communicate when there is a problem. Requiring some form of communication, I believe, is more cost effective for small business, as most if not all would have two-ways or cell phones. I do not think that would be an additional burden or cost.

The current 5 day grace period and its elimination is not really a cost issue, but more of a timeliness issue. For me, the grace period allows me flexibility if I am busy on the first couple of days to provide me more time to complete the training. Again, a small business person is handling multiple tasks. Training every five years makes sense, but if there is concern with this, then require a written document showing that training has taken place rather than increasing the frequency. Specific, documented training should be for Restricted Use Pesticides, not on all product use. I am more concerned with appropriate training where the need dictates rather than just training for training sake.

I've already addressed posting, but to respond to the written question, posting could be quite difficult and time consuming. In a given year, I could spray my table grape vineyard up to 15 times (herbicide, foliar sprays, pesticides, fungicides, fertilizers). As I mentioned above, I could do 5-6 sprays within a three week period. Posting would take up a very large chunk of my time. I would rather post for RUP's. The only time I expect early reentry is for irrigation, which would be opening valves at the end of the row, for about 1 hour per day over a 2 day irrigation period. Minimal contact with foliage occurs during this time.

A No-Entry zone around the field would have a disastrous impact upon us. We have shared avenues with other producers, who are growing different crops, with different spray schedules.....this is impossible to accept.

Regarding MSDS's, unless you subscribe to a service, it is very difficult to obtain them. I have asked for them from my pesticide dealer, and they don't always have them, and trying to get them from the manufacturer is very difficult for a small business. They just don't have the manpower to get us what we need and we don't have the clout (because of our low volume purchasing) to get their attention.

I hope my comments have been helpful. Please let me know if I can answer and questions.

Sincerely,

A handwritten signature in black ink that reads "Richard Matoian". The signature is written in a cursive, flowing style.

Richard Matoian



Joe Hogue/DC/USEPA/US  
07/07/2008 11:56 AM

To JoanB Rogers/DC/USEPA/US@EPA, Caryn  
Muellerleite/DC/USEPA/US@EPA, Bill  
Diamond/DC/USEPA/US@EPA, Carolyn  
cc  
bcc  
Subject Detailed comments from another SER - forwarded

Thanks,

Joe Hogue  
EPA, Office of Pesticide Programs  
FEAD/PRSB (7506C)  
phone: Tues, Wed, Thurs > (703) 308-9072  
Mon. & Fri. > (804) 448-8027

----- Forwarded by Joe Hogue/DC/USEPA/US on 07/07/2008 11:53 AM -----



"webbfarm@netzero.net"  
<webbfarm@netzero.net>  
07/06/2008 06:41 PM

To Joe Hogue/DC/USEPA/US@EPA  
cc  
Subject followup for Potential SER session 1

Joe,

Here is my written followup to session 1. I enjoyed the conversation. One comment, I had difficulty hearing the other people in the room in Washington. I could hear you fine and most of the other callers, but not the ones that spoke up in the room.



Cint Webb SER Outreach follow up session 1.doc



Clint J. Webb  
Webb Farms  
6430 Dixie-Barwick Rd.  
Boston, GA 31626  
Family farm: cotton, peanuts, corn, hay  
Commercial Applicator personal use only  
One employee

June 30, 2008 Potential SER Outreach Meeting Follow up

Adding certification categories for commercial applicators:

Here in Georgia we already take two tests to become certified commercial applicators; one is general pesticide safety and worker protection standards and the other is specific to one of over 16 subcategories. The tests are proctored, closed book and only given at approved locations and times around the state. This can sometimes limit when a person may get certified, but it seems to be working fine today. I think this is the appropriate way to do it and any standardization on the national level would be an improvement.

Applicator minimum age:

I am not comfortable with the EPA establishing a generic minimum age for applicators. I personally know forty year old men that are not capable of applying RUPs and also twelve year olds that are fully capable and mature enough for the job. I personally started applying RUPs as early as 12 or 13, and I know some around that will use guys 16 or possibly younger. Speaking as a small family farm, we regularly use family labor that may be young for such jobs. They have been familiar with such tasks and are supervised by a licensed adult. Without the option for such labor, we would either have to rely only on the certified applicators to do the work or be forced to hire additional help of an older age. Both scenarios would add unnecessary expense to the operation and/or delay pesticide applications which will result in yield reductions. I think the certified applicator should be competent enough to determine if an individual is capable of safely applying the chemical.

I also feel there should be no minimum age on who can receive a pesticide license; whether private or commercial. The test should be of the caliber to address that concern. If one is capable of learning and understanding the concepts on the written test then they should be given the rights that come with that knowledge. If I am working a 12 or 15 or 25 year old employee, I would much rather they go take the private applicator test and be certified than they simply be under my supervision just because they have not crossed some arbitrary age threshold. I feel that in preparing for that test they will undoubtedly pick up important information on how to react to a situation that I may have overlooked because it is second nature to me as an experienced applicator.

## Applying RUPs under the supervision of Certified Applicators:

I have one employee that is not a certified applicator. He works under my supervision and that of my dad, who is a private applicator. This employee has been with us for 23 years and is perhaps more familiar with pesticides than many recently passing the test. There are many farmers in the area that have applicators working under supervision. These employees are trained typically by the supervising applicator. I think there is no reason a licensed applicator cannot do the training. I do not have a problem with a more specific training program. It would be good to have a clear set of criteria that should be covered when doing employee training, but it should be done in house. I do not feel that it is necessary to carry employees off farm or bring in additional staff for training. That again adds expense to the operation.

Supervisors often range from being in the field with the applicator, perhaps on another piece of equipment, to being in the area, often checking in regularly as they manage multiple workers in different areas. Having a means of instant communications is a great idea. Those that have two-way radios and cell phones certainly have an advantage, but it seems to be an overreach to require such devices. Such issues that may come up and need communications should be handled in the training. I understand that things happen, but a well trained employee should have been told ahead how to deal with situations like spills or contamination. We have some cell phones and some radios, but we are not covered in all areas at all times. I like to be in communication with my help, but there are times and equipment that is not currently possible. To make it so would be an added expense of several hundred if not thousands of dollars in equipment and future subscriptions.

## Worker Protection Standard

### Training:

Properly training employees is very important to both their safety as well the functioning of the company. It is important that they be trained thoroughly and promptly. However, the current grace period is essential to allow time for new employee training. I find it basically impossible to verify training so any new employee undergoes training, but it really helps to have the flexibility to know it can be worked around our busy schedules rather than having to stop some vital task to perform the training. That is especially true since I do my own training. As I said earlier, I think the training criteria should be clarified and would even like to see a consistent, concise training manual so that I know I have covered everything necessary.

I do not agree with shortening the retraining interval. In Georgia, my license has to be renewed every 5 years. If that is enough for a commercial applicators license then it is enough for worker training. We have no turn over, I know several that have very low if any turnover; I would hate to see regulation geared toward high turnover operations that simply puts us going over the same ground time after time. Each employer will have to do new training as his labor situation demands, but to retrain current employees more often than 5 years is simply unnecessary.

## Restricted Entry Intervals (REI):

Here in Georgia we currently have to post a warning sign after applying RUPs. The sign is a standard written and pictorial sign issuing a warning of danger to stay out. They are to be posted for the duration of the REI. Putting the signs up as you leave the field is not a great burden, however, keeping track of different fields and times so they are not left up unnecessarily can be time consuming. We only have to place the signs at the entry to the field. Currently dealing only with RUPs, for crops like cotton or peanuts we will typically have to post a field five times a year. Proposals to require posting on all pesticides having an REI would dramatically increase that number to as much as 30 or 40 for crops like cotton. The task of keeping up with posting time and expiration times would be tremendous. For our small operation, only about 500 acres in cotton, it could take one person up to one hour each day just riding and updating posting signs. Add to that the cost of the gas and the vehicle and you just spent \$25 a day in added costs all the while that worker is not doing some other important task.

There are two concerns with having to add the chemical name and REI expiration to the sign. One, the signs become consumable rather than reusable because the chemicals and times change with each posting. Two, with the chemical name present, you open the sign to interpretation by employees rather than it standing alone as clearly “do not enter”.

The signs we currently use display a red octagon and a man with a hand indicating stop. These symbols work to convey the information of restricted access. Other suggestions such as the skull and crossbones would be much less effective as they do not simply say stay out but rather convey a message of impending danger; which is not the case with these pesticides so long as the REI is honored.

We discussed guidelines for posting signs in fields. I firmly believe it is only necessary to post such signs at logical points of entry. There is no reason to have to place signs along perimeters or other configurations around a field. The signs are there to inform authorized personnel and chance entrants of the dangers in the field; we are not trying to barricade the field with them. Postings in general, but especially any such regulation would have added effect on small farmers. Typically as farm size decreases average field size decreases. Under either scenario, the small farmer will have to put out more signs and spend more time per acre than a larger farm.

For example, on 500 acres with average field size of 30 acres, I would have to post 17 signs just at entrances. Add perimeter signage and you can increase that number by 10 to 100 fold. By comparison, take a farmer with 5000 acres of cotton with an average field size of 250 acres, he will post 20 signs, but each sign will cover three times as many acres as the small farmer. Also, in the case of perimeter postings, the larger the field, the fewer perimeter feet per acre equaling fewer signs per treated acre. It just begins to spiral into unbearable demands of time and manpower.

We rarely need to send in workers earlier than the labeled REI. Under such situations it is important to communicate with the workers that they understand the proper protections to take. There is no reason such communications must be in writing. The workers should be verbally informed about the restrictions and dangers posed by entry. Careful records should be kept of workers entering those areas in the event of adverse effects from exposure.

#### Application entry restricted area:

We currently have a policy of not applying pesticides with people in the immediate area of the application. There are times that it is necessary for a worker to be in the area. We have several fields with residential homes around them. We maintain a good working relationship with these people and inform them of the dangers of the pesticide we use. With that said, I feel that a no-entry zone for fields and forests is not possible like that of a contained structure like say a greenhouse. It is not practical for farmers or homeowners to force their yard into a no entry zone for an extended period of time. As for workers, it is important that they stay out of harms way during pesticide applications.

#### Hazard Communication:

We discuss proper PPE use and cleanup regularly with staff. We monitor their use of such equipment both visually and verbally to ensure their safety. We make every effort to provide adequate eye flush water and rinse water at mixing sites. The problem with many farms is that we have to be mobile. There may be one central shop or office, but for a farm to be productive the workers are rarely there and even fewer pesticides are used from there. Decontamination equipment such as soap, towels, and eye flush is kept in the mix wagon for applicators, but is not efficient or necessary to have an excessive amount of it or to mandate a shower system for every operation.

I feel a restriction on the amount of time handlers are allowed to work with OP and Carbamates is unnecessary. Following approved label PPE should adequately protect workers for these compounds. If that is not enough protections then the label should be altered so that it will. If there is a limit imposed we could run into a situation of having to delay pesticide applications that could reduce crop yields. On the same line, if a label establishes that an enclosed cab will replace a respirator then let it. If the enclosed cab is not adequate protection, then why were we allowed to use them in the first place? Such enclosed cabs should be maintained and routinely inspected with appropriate recordkeeping, just as respirators or any other piece of PPE should be. I firmly support safety, but there is no need to have duplication.

Requiring that MSDS be kept for all chemicals used will add many hours of time spent finding and printing sheets just to be placed in a file. You will have the added space necessary to keep the file. I would much rather have a database online where anyone could go at anytime to look up MSDS by chemical name. That way everyone will have them readily accessible without having to devote time and space to keeping up with them on every farm.

B2: Written Comments from Small Entity Representatives following the 09/25/2008 Panel Outreach Meeting





































































































person or the environment where they live, so too with the commercial applicator who makes a living at doing things like spraying and recommending pesticide practices.

Thank You

John Hester



REEDFLY@aol.com  
10/09/2008 07:34 PM

To Caryn Muellerleile/DC/USEPA/US@EPA  
cc  
bcc  
Subject Re: reminder: comments on EPA rules' small business  
impacts due Thurs 10/9

Thank you, Caryn. I have attached my comments as a Word document to this e-mail.

Rick

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more. [Try it out!](#) SBARP.docx

October 9, 2008

Alexander Cristofaro  
c/o Caryn Muellerleile  
1200 Pennsylvania Ave, NW  
MC 1806A  
Washington, DC 20460  
[muellerleile.caryn@epa.gov](mailto:muellerleile.caryn@epa.gov)

Dear Mr. Cristofaro:

Thank you for the opportunity to comment on the forthcoming regulatory proposals. I shall keep my comments brief.

**Applicator Certification Rule (Restricted Use Pesticides)**

1. Illinois requires testing in specific categories every 3 years for commercial applicators. I personally take 7 different tests every three years to remain qualified to do my job. In states that do not require repetitive testing, but rely upon Continuing Education programs, I anticipate that the certification categories you suggest would be taught and tested as part of their ongoing program.
2. The applicator minimum age proposal will not adversely affect those businesses who employ commercial applicators because my industry uses aircraft for our applications. We already have minimum age requirements for obtaining a commercial pilot's license.
3. We are not required to pay a fee (in Illinois) for taking the required tests, all of which are closed book, and proctored. Expense incurred in traveling to an exam site is really impossible to categorize and estimate for everyone involved.

**Worker Protection Standard (Workers and handlers in plant agriculture)**

1. The suggestion that requirements for additional posting of REI are being considered is truly interesting. I understand the rationale is to make sure "everyone" is adequately warned if a field has been treated. Realistically, the only individuals who are supposed to be entering that field are legal workers who have been instructed to enter at "the usual point of entry." Other individuals who might choose to enter the field from any direction are, in my opinion, trespassing. The WPS were written to protect workers and not trespassers. Other specific comments are:
  - i) I doubt the rationale that trespassers would only choose to enter a field at the corners.
  - ii) If the corners of a field are inaccessible by road, path, etc. would the posting still be required?
  - iii) Time for posting would be considerable. For example a typical 160 acre square field with 4 distinct corners would necessitate a walk of 2 miles to place the signs. Some of the fields personally treated are considerably larger than that. The 15 minutes assumed by EPA is based on what?

- iv) Consider the posting of very small fields of fruits and/or vegetables i.e. 1-2 acres. Posting the signs would take considerably less time than large fields, but to what advantage? You could stand in one place and be within 100 feet of every sign posted.
  - v) Some fields have considerably more than 4 corners and some don't have any corners at all. Where do you propose posting additional signs on a round, center pivot irrigated field?
  - vi) The requirement would be extremely time
2. The requirement of a no-entry zone of any distance would have no effect because applications are prohibited if any personnel, workers or otherwise, are present at the site of application.
  3. It would not be a burden to maintain a pesticide MSDS file because we are already required to have MSDS information available. Adding a requirement that MSDS sheets be posted for viewing is possible but futile. They would simply never be utilized. The pertinent information a worker may be interested in is found on the EPA approved label that accompanies every product applied.
  4. The proposed requirement to force the wearing of a respirator in a closed, sealed cab is without foundation, would cause undue hardship and discomfort, and possibly magnify the potential for inadvertent contamination. I have to question the motive here. During the teleconference, I heard that research has shown an enclosed cab's filtration system is less effective than a well designed, correctly fitted, clean respirator. I'm not surprised by that. I also have no doubt that a full decontamination suit, complete with bottled breathing air and a full face airtight helmet provides greater protection than the simple respirator. What exactly is the problem we're trying to fix? I propose that the enclosed cabs in use today are sufficient protection. Do we have statistics that show workers are becoming ill while making an application from an enclosed cab? If so, than the circumstances of that exposure should be studied and then remedied.

Respectfully,

Rick Reed  
Reed's Fly-On Farming



"webbfarm@netzero.net"  
<webbfarm@netzero.net>  
10/03/2008 03:08 PM

To Caryn Muellerleile/DC/USEPA/US@EPA

cc

bcc

Subject Re: Worker Protection Standard for Agricultural Pesticides  
and Certification of Pesticide Applicators - Small  
Business Advocacy Review Panel Outreach Meeting  
Invitation and Materials for Small Entity Representa  
tives

Mr. Cristofaro,

I apologize for my absence from the Sept 25 teleconference. I have reviewed the materials sent out and I feel that my original comments from the June meeting sufficiently outline my positions on these proposals. I am resending those comments as an attachment for reference. I hope that is adequate participation on my behalf to aid in this panel's conclusions. Again, I apologize for the conflict in schedules and offer my continued support and assistance on these issues.



Clint Webb SER Outreach follow up session 1.doc













muellerleile.caryn@epa.gov



AFBF Comments\_10-9-08.pdf

October 9, 2008

Mr. Alexander Cristofaro  
Small Business Advocacy Chair  
1200 Pennsylvania Avenue, NW  
MC 1806A  
Washington, DC 20460

RE: U.S. EPA's Small Business Advocacy Review Panel Comments

Dear Mr. Cristofaro:

Thank you for the opportunity to provide comments to EPA's Small Business Advocacy Review (SBAR) Panel regarding future proposed rules on the Worker Protection Standard (WPS) for Agricultural Pesticides and Certification of Pesticide Applicators (CPA). As the nation's largest general farm and ranch organization, American Farm Bureau Federation (AFBF) represents individuals and families engaged in all aspects of production agriculture throughout the 50 States and Puerto Rico. We believe these comments are representative of the different regions and states across the country.

**General:**

1. Flexibility is critically important for this type of regulation, primarily due to the diversity of producers that will be affected. For instance, a 40-acre vegetable farm is considered quite large while a 200-acre row crop farm is considered small. The 40-acre vegetable farm might well have a full-time employee who did record- and bookkeeping, maintained permit records, etc. in an administrative capacity. The 200-acre row crop farm, by contrast, would most likely be operated either by a single producer, or as a family farm where the owner/operator would work another job off-farm; stringent record keeping in such circumstances is extremely stressful and time consuming and be inordinately burdensome for family members.
2. In order to be successful, "small entity" would need to be defined for each different type of farm or producer. It would need to be flexible. Based on the different types of operations involved, the number of employees would come closest to determining size of operations. Any regulation of farms with five (5) or fewer employees would be problematic for record keeping and implementation.

**Certification of Pesticide Applicators**

**Adding Certification Categories for Commercial Applicators**

Certification categories vary state by state. In Iowa, for example the M44 device and compound 1080 for controlling livestock predators have not been considered for use. If there were demand for these types of predator controls where they could be used safely it would be considered. We would hope that EPA's new rule would not require states to develop a category if they have no use for these controls at this time. A state should have the option and flexibility to decide whether they need to develop the category or not and if the need arises in the future then the state could move forward to develop the category according to EPA's guidelines.

In addition, requiring states to develop additional categories would be a "raising of the bar" with regard to curriculum and protocols. Growers are concerned that it would make it considerably more difficult to pass the tests, maintain the license and require substantial more time studying and training to get and maintain a license. This would also unnecessarily require more resources by state agencies to develop study guides and training by staff.

#### **Applicator Minimum Age:**

1. In some states there are minimum age requirements for the application of RUP's and in other states there is not. Proposed 16 or 18 minimum ages should not have an impact on commercial applicators. However, there could be an impact on private applicators in family farm operations. We think a person that is 16 should be allowed to be certified as a private applicator if needed.
2. The minimum age requirement would primarily affect family farms with sons or daughters who work on the farm. Most family farms trust their own children more than hired labor because they have been raised on the farm, been taught for years by their parents how to treat chemicals and equipment, and have a respect and sense of responsibility that hired labor might not possess.
3. The family farm that is required to replace a family member would face all the costs associated with hired labor or outsourced commercial applicators. Hired labor requires a salary, unemployment taxes and worker compensation taxes. There is also the cost associated with reliability and the assumption that a certified worker will show up when needed.

#### **Applying RUP's under the Supervision of Certified Applicator**

1. Many states do not require certification to apply RUPs as long as they are under the supervision of a certified applicator. Some states do require certification but allow a certain grace period under supervision before getting certified.
2. The number of non-certified applicators applying RUPs under supervision will vary based on the type and size of farm.
3. Requirements vary state by state by state, farm by farm. For example, for large row crop farms, the supervisor will generally be within five miles of the application site. For smaller farms, the supervisor would be much closer, anywhere from a couple of hundred yards to two (2) miles. Instant communication would be conducted by cell phone, two-way radio or other device. Estimated costs of providing communication devices would be in the hundreds of dollars per person.

In general, we have the following concerns: Requiring supervisors and applicators to have “instant” communication would put the applicator at risk of pesticide exposure when trying to use the cell phone, two-way radio, or other device. Decontaminating first would prevent the ability for it to be “instant”. Also, carrying the label on their person during application does not increase their safety because they are not going to refer to the label during the actual application. They would look at the label pre- or post- application to prevent pesticide contamination.

### **Exam Administration for Commercial Applicators**

Exams vary state by state. In Iowa for example, their law requires that both commercial applicators and private applicators pass a written exam for initial certification. Iowa’s rules also permit an oral exam for private applicators on a case by case basis. All exams are proctored, closed book exams. An applicator is permitted to review a failed exam with the correct answers under supervision of an exam proctor. They require all persons taking exams to provide a photo ID.

We believe the states should continue to have the flexibility to decide what type of exam is required. Positive identification should be required.

### **Worker Protection Standard (Workers and handlers in plant agriculture)**

#### **Training**

1. The two (2) day grace period is unacceptable. Many of the RUP’s are pre-plant herbicides, and planting is the most crucial and time-sensitive period of year. Employee hiring, or start dates, are held off as long as possible to reduce input cost. If the grace period were reduced, or eliminated, it would require the earlier hiring of employees and increase input costs \$100-\$200 per hire.
2. The retraining frequency of every 5 years has been effective in worker safety while not being an unusual burden for agricultural employers. While most workers are trained every year because of turnover and consistency issues, we do not support the training interval being reduced.
3. Currently, most producers probably do not check for training history at the time of employment. It is important to remember that 1) farmers are not recruiting on college campuses 2) farming is hard work and labor turnover is substantial 3) most farm labor does not give two week notice when they leave; they just don’t show up 4) labor is hired just-in-time, therefore the person you hire today was probably unemployed yesterday.

It is extremely difficult for farmers to find good labor in a timely manner and to get them the proper training as soon as they are hired. Flexibility is needed. Smaller farmers with fewer than 5 employees are tremendously busy as each person has tasks that need to be completed in a timely manner with no extra person around to fill in the gaps. Training requirements that cause a severe burden and that do not allow important tasks to be

completed before training is done impose unacceptable costs without identifiable benefits. We estimate that in general, training sessions for workers will require 30+ minutes and for handlers 45+ minutes.

### **Restricted Use Intervals (REI)**

WPS warning signs are only needed when the pesticide label indicates that areas need to be posted as well as oral warning for workers. Some agricultural sites are posted in lieu of the oral warnings, as provided for on the pesticide labels. The requirement for both oral warnings and postings are specific to pesticide products that pose a threat to workers health. Workers are taught to read the label and the information on REI should be located there. If more information should be needed, the label could direct you to the WPS.

Central posting of information with either oral or written notice should work adequately. Farms post on a dry erase or chalk board at a central location which fields have been sprayed and when. This is a common sense approach that works well. Workers frequent the common area to get the required information. Additional requirements would be time consuming and costly, and it should be noted that the time that it takes to place signs by an employee is time lost to productive activity elsewhere, thus greatly increasing input cost to the farmer. It does not make any sense to require that each corner of the field be posted. Were that the case, it might serve just as well to rope off the entire field – an approach which is totally impractical.

It is very time consuming to put up signs. If you have the signs in the spray rig or tractor, a conservative estimate is that it would take 10 minutes per sign. You have to count the time from when the machine stops, until you are back in the seat. That includes attaching a stake, and hammering it into the ground. Again, 10 minutes per sign should be used as a conservative estimate. If the signs are not in the spray rig or tractor, but are put out by another supervisor or employee, it would take an estimated 30-45 minutes per sign. It is important to note that some large fields would take 45 minutes or more just to drive around without placing the signs. In the case of aerial applications, the time placing signs is an additional employee that could be productive elsewhere and greatly increases input cost.

Flexibility is essential to allow the farmer to do what makes the most sense in their operation to inform workers on REI without compromising worker safety. Smaller operations have central meeting places where all types of information exist. Having REI information at this central spot is adequate.

### **Application Entry Restricted Area**

We are adamantly opposed to a requirement of a no-entry zone around fields. A no-entry zone would be completely arbitrary and not based on science. Smaller vegetable farms with small fields would be severely impacted. Not being able to be 100 feet from a field being sprayed would eliminate potentially being able to be in several adjacent fields. Significant economic loss from this could occur as a result of work stoppages and loss of labor. We do not believe that lack of such a requirement would jeopardize worker safety.



**Hazard Communication**

Pesticide labels have the correct PPE for handlers and early entry workers. No other document should be needed.

**Decontamination**

Flexibility is needed to address decontamination. Requiring a shower for handlers at every farm would be a financial burden for many agricultural employers and are simply not necessary. All farms using pesticides have flush water available. Portable decontamination showers cost between \$5000 and \$6000, plus water which would create an exceptional economic burden for many farms. A better requirement to protect workers and their family would be to require that workers remove early entry clothing including foot wear and do not take it home with them.

In summary, we oppose any curtailment of the safe and proper use of agricultural chemicals unless research and scientific data determine that injury to health and well-being would result. EPA contends that it is difficult to fully meet that standard under current regulations because there are gaps in protection resulting in unreasonable adverse health effects for workers and their families and gaps that allow potential for environmental damage. We do not concur with that assertion. Any new future requirements should allow state flexibility to address issues and concerns based on individual state data that pertain to their crop management systems. Federal rules should not be driven by regional needs or deficiencies in other state's programs.

AFBF appreciates the opportunity to submit these comments and looks forward to continuing discussions with EPA on all matters relating to WPS and CPA.

Sincerely,



Tyler Wegmeyer  
Director  
Congressional Relations



"Morgan Wright"  
<MWright@woodpreservers.com>

10/07/2008 12:25 PM

To Caryn Muellerleile/DC/USEPA/US@EPA

cc

bcc

Subject Written Comments for Alexander Cristofaro in Reference to  
09/25/08 Small Business Review Panel Meeting

Mr. Cristofaro,

I would like to submit the following written comments with respect to the Small Business Review Panel Meeting that was held via conference call on September 25, 2008.

- 1- I feel that wood preservatives are not within the scope of the agricultural worker protection standard (40CFR170), and therefore all of the issues related to 40CFR170 are not applicable to wood preservatives.
- 2- One issue being look at by this panel, that I feel is relevant to wood preservatives, is the certification of applicators of restricted use pesticides, rule (40CFR171). In developing a standard it would be nice to have the re-certification classes be based on subject matter that is relevant to the use of wood preservatives. In some states wood preservative applicators sit through classes that are geared toward the use of agriculture pesticides. The application of wood preservatives in a closed loop system has many differences from the application of agriculture pesticides in the field.

Thank you for the opportunity participate as a SER.

*Morgan Wright  
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