

Pesticide Worker Safety Program: Enhancements in Protections



Enhancements in Protections – Why?

- ◆ **The agricultural worker protection rule (40 CFR Part 170) and the regulation for the certification of pesticide applicators (40 CFR Part 171) have both been in effect for many years.**
 - ◆ **Old regulations**
 - ◆ **Our understanding of pesticide risks has changed**
 - ◆ **Circumstances of pesticide use have changed**
- ◆ **The regulations are in need of updating and modification**
 - ◆ **to achieve their public health and environmental protection goals,**
 - ◆ **meet evolving demands and improved understanding of risks,**
 - ◆ **and satisfy statutory mandates**
- ◆ **Implementation experience and significant stakeholder input has identified regulatory deficiencies that should be addressed.**

Role of Stakeholders

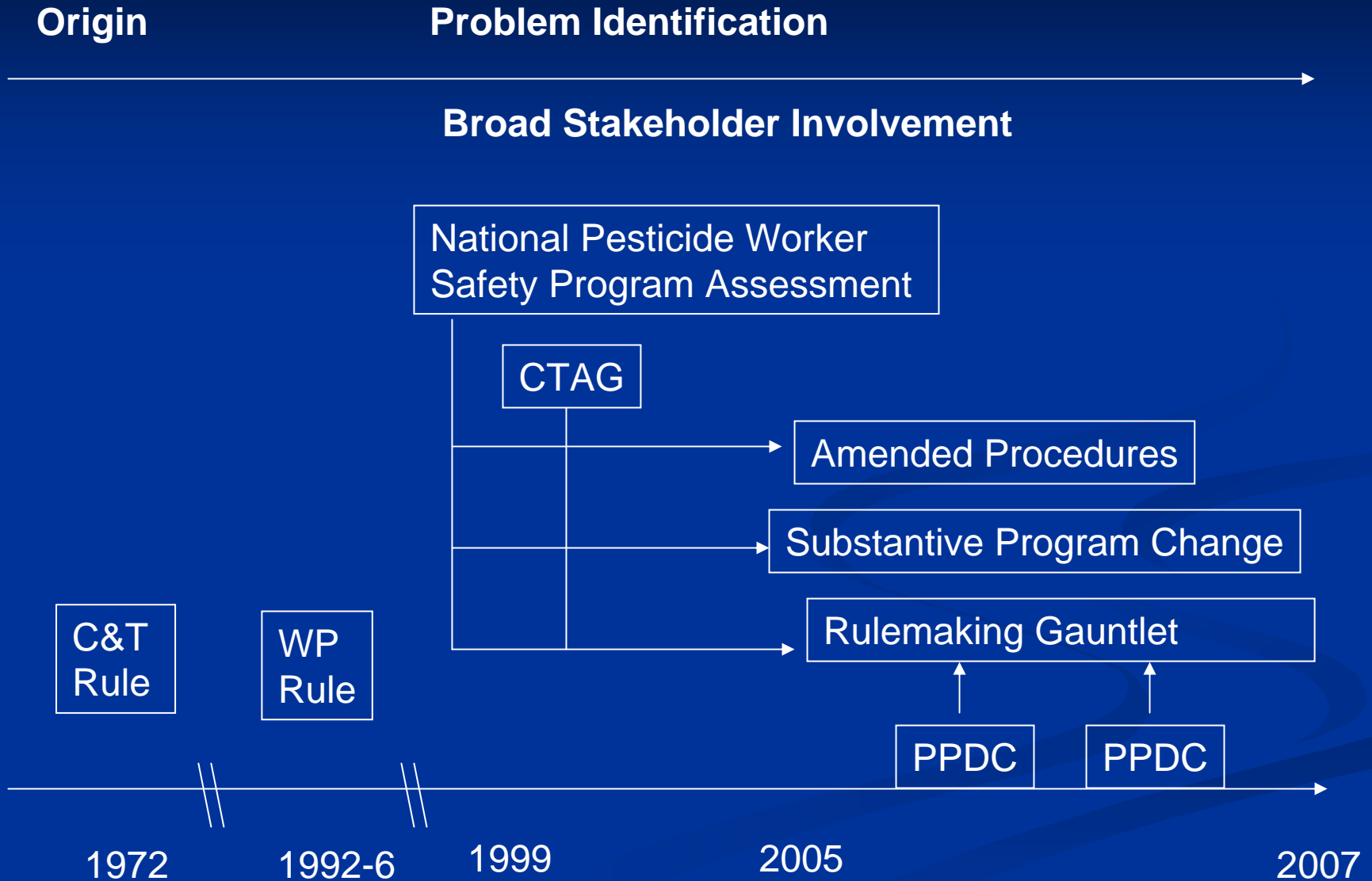
◆ Consultation

- **Primary identification of issues**
- **Supply supporting documents**
- **Review documents and drafts at critical junctures**

◆ Coordination

- **Provide information about process and content to those you represent**
- **Solicit their input**
- **Encourage their comments**

Pesticide Worker Safety Regulations Change Project Development and Scenario



Partial, Simplified Rule Schedule

2006

2007

Analytical Blueprint

Workgroup

Data Collection & Analysis

Stakeholder Input/FACA

Options Development

Options Briefing/Selection

Mandated Consultations (SBA)

Drafting Rule/Preamble

Economic Analysis

SAP Issues Review

OPP OD review Draft Proposal

Revisions

OPPTS Review USDA Review

Revisions

FAR

OPEI

OMB

Revisions

OPEI

Administrator's Signature

Finalize Docket

Federal Register Proposal Publication

Public Comment

Goals of the Pesticide Worker Safety Program



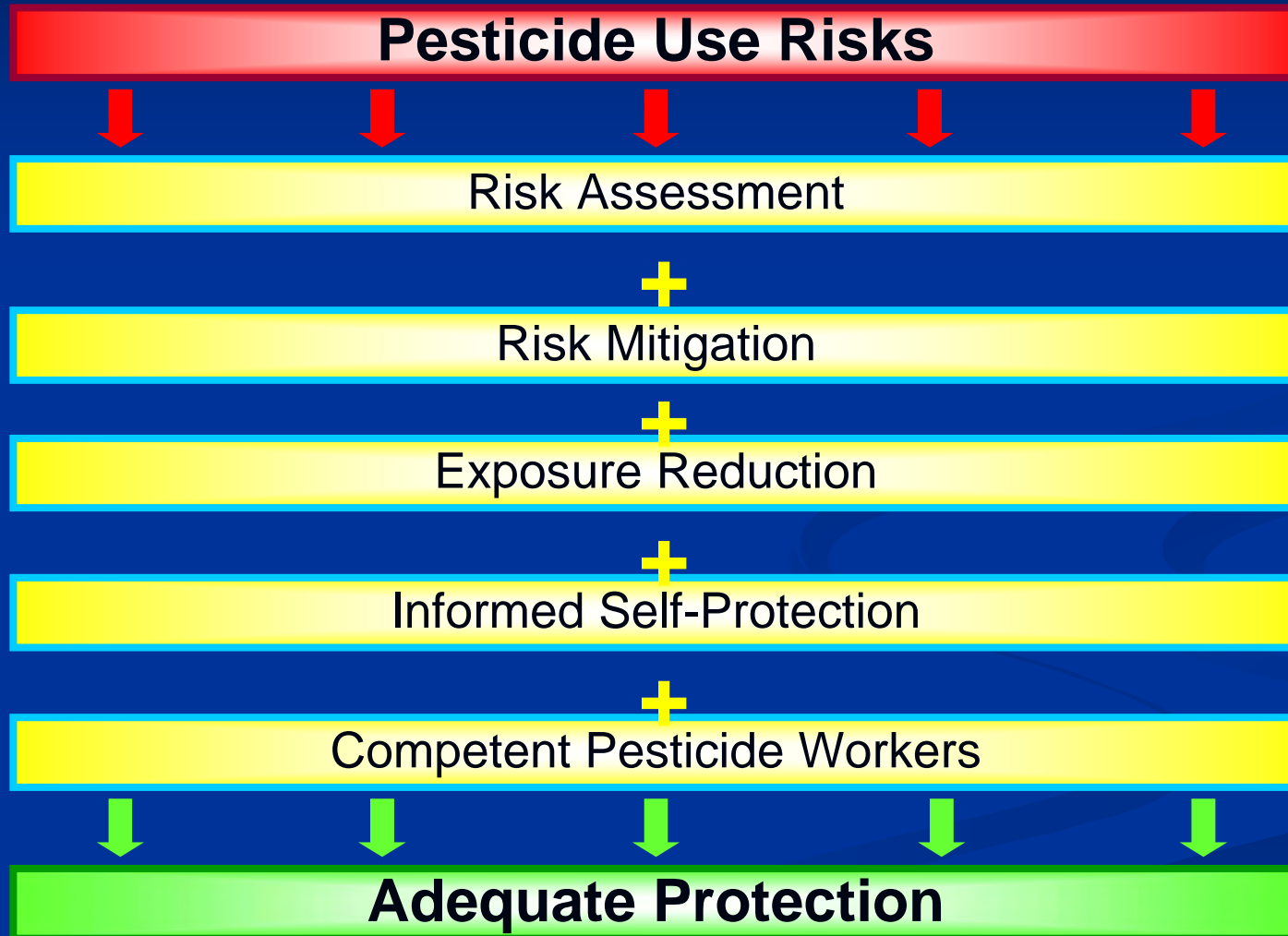
Protect human health and the environment by ensuring the competency of pesticide applicators.

Minimize pesticide exposure to occupational pesticide users and agricultural field workers.

Assure proper containment, storage, disposal of pesticides and recycling of containers.

Engage health care providers in improving the recognition and management of pesticide poisonings.

Pesticide Worker Safety Program Integrated Protections



Pesticide Worker Safety Program Multiple, Integrated Tools



Program Actions to Date: Revised state guidance, curriculum for trainers of agricultural workers, improved enforcement ability, developed valid exam for pesticide applicators, etc. Ongoing work.

Regulation change is the best mechanism to address some of the remaining issues and will complement existing efforts.

Pesticide Applicator Certification Regulation (40 CFR 171)

1974 Regulation (7 U.S.C. 136b and 136w)

Applicators must meet competency requirements before they use or supervise the use of restricted use products (RUPs).

Coverage / Scope

- **Private and commercial applicators of RUPs**
- **11 federal category standards of competency**
- **Uncertified may apply “under direct supervision” of certified**

Competency

- **Commercial competency based on specific categories**
- **FIFRA prohibits federal requirements for testing private applicators**
- **Recertification of competency required**

Implementation

- **Certifying agencies must have an EPA-approved plan**
- **Annual reporting requirements**

Agricultural Worker Protection Regulation (40 CFR 170)

1992 Regulation (7 U.S.C. 136W)

Intended to protect agricultural workers and pesticide handlers from the effects of exposure to pesticides on farms, forests, nurseries and greenhouses.

Risk Communication

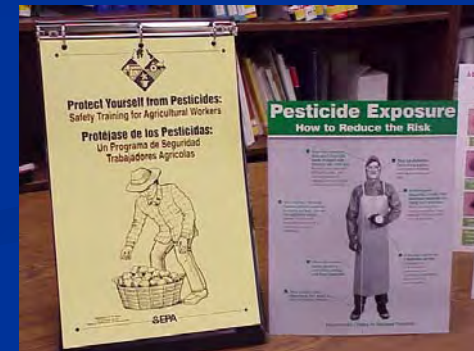
- Basic safety training
- Safety poster
- Notification of workers
- Central posting: label & site information

Protection

- Protective clothing/gear
- Restricted entry interval
- Protection during applications

Mitigation

- Decontamination supplies
- Emergency assistance



National Assessment of the Pesticide Worker Safety Program

Worker Protection Assessment Workshops

- Public meetings in TX, CA, FL, DC to evaluate the agricultural worker protection regulation and program

Certification and Training Assessment Group (CTAG)

- CTAG was established to assess the status of, and provide direction for, the future of the national pesticide applicator certification and training program

Both activities engaged diverse stakeholders and produced a series of recommendations for regulation change and program improvement. Assessment report issued in May 2005.

National Assessment Report

Identified areas needing change

- Expand and upgrade applicator competency
- Increase activities to promote safer work practices
- Improve worker training and communication with workers
- Focus on enforcement efforts and improve the training of inspectors
- Train health care providers and monitor pesticide incidents
- Focus on operational efficiencies



Need for Regulatory Change

Risk Reduction

- Close gaps in intended protection of the original rules
- Deal with unaddressed risks identified since original rules
- Respond to broad stakeholder reviews
- Raise minimal federal standards to decrease variation among states

Program Improvements

- Good government requires periodic assessments and action
- Clarity and transparency in national programs and guidelines
- Meet statutory requirements in balance with economic and risk analyses

Program Efficiency

- Clarify existing rules
- Improve federal standards to promote reciprocity between states

Pesticide Worker Safety Program

Proposed Areas for Regulatory Change

Applicator Competence

Protective Requirements

- ◆ Ensure all occupational users possess appropriate competence for safe pesticide use
- ◆ Match competency standards for occupational users with level of risk

Operational Efficiencies

- ◆ Promote national consistency & ensure efficient, cost-effective use of government resources

Agricultural Worker Safety

Protective Requirements

- ◆ Equip agricultural workers with understandable information on risks and self-protective actions

Operational Efficiencies

- ◆ Simplify and clarify regulatory language
- ◆ Promote national consistency & ensure efficient, cost-effective use of government resources

Label Regulation Amendments

- ◆ Amend labeling regulations to conform to these changes.

Change Areas for Applicator Certification Regulation (40 CFR 171)

Protective: Appropriate Coverage & Raise Competency

1. Expand users required to demonstrate competency
2. Eliminate “under-the-supervision”
3. Require RUP dealers to prove competency
4. Require trainers to prove competency
5. Set minimum age for occupational users
6. Require testing for occupational users
7. Set standard requirements for testing
8. Competency requirements consistent with risk
9. Evaluate ongoing competency
10. Ensure continued evidence of competency

Efficiency

1. Develop standard certification categories
2. Equalize standards for states/tribes/territories
3. Assure program accountability



1. Expand Users Required to Demonstrate Competency

Problem Statement: Current regulation applies only to narrow set of applicators who use restricted use products (RUPs). Workers in industries not currently covered are at risk for pesticide exposure incidents.

Options under Consideration:

- Establish verification of competency appropriate to levels of risk for all occupational users
- Limit verification of competency to those occupations with highest likelihood of exposure

Rationale & Issues:

- Uncertified occupational users present increased potential risk to themselves, the public and the environment.
- Important risks of concern: use near vulnerable populations not traditionally protected, e.g. schools, nursing homes, hospitals. Public concern for these populations is rising.
- States have exceeded the federal standards; 42 states require applicator certification for non-RUPs.

Engaged Stakeholders: CTAG

2. Competency Demonstration for All Who Handle or Apply RUPs

Problem Statement: Applicators who have not demonstrated competency may apply pesticides while under the direct supervision; there is no standard definition of direct supervision

Options under Consideration:

- Eliminate the “under the direct supervision” provision
- Define the “under the direct supervision” provision

Rationale & Issues:

- Under the supervision was included in the regulation to ease implementation by increasing the number of potential applicators.
- Current understanding of risks as well as strong certification programs indicate that this provision should be eliminated.
- There is no limit on the number of employees or the maximum distance allowed to be considered under the supervision.

Engaged Stakeholders: State Regulators

3. Protective: Competency Demonstration for Pesticide Dealers

Problem Statement: Dealers are responsible for large quantities of pesticides and often provide advice on product selection, but are not required to demonstrate competency.

Options under Consideration:

- Establish verification of competency for dealers through certification, require off-site inventory list and establish minimum security standards**
- Establish verification of competency for dealers through certification**

Rationale & Issues:

- Assurance of competence for dealers would enhance public safety and contribute to homeland security.**
- CropLife America has established a similar voluntary standard and has received a positive response; regulation is necessary to set a national minimum standard.**
- Thirty-two states already have a certification category for dealers.**

Engaged Stakeholders: CTAG, CropLife America

4. Ensure Competency of Trainers

Problem Statement: Trainers influence behavior and are a primary source of information, but are not required to demonstrate competency as educators.

Options under Consideration:

- Establish verification of competency for all trainers of pesticide applicators, ag handlers, and field workers
- Establish verification of competency for field worker trainers

Rationale & Issues:

- Current requirements allow any certified applicator or handler to provide pesticide worker safety training, regardless of their knowledge of training requirements or ability to teach.
- The Train-the-Trainer pilot results indicate that participants are more successful trainers.
- An applicator must pass a competency gauge, but a worker has no such gauge; therefore, the trainer must be competent to train in order to assure the worker receives effective safety training.

Engaged Stakeholders: CTAG

5. Minimum Age for Pesticide Users

Problem Statement: There is no established minimum age for occupational pesticide users.

Options under Consideration:

- Establish a minimum age of 18 to purchase or use pesticides occupationally
- Establish a minimum age of 18 to purchase or use pesticides commercially, 16 to apply on family farm

Rationale & Issues:

- Exams measure knowledge; however, competency includes acquired decision-making skills that are experientially developed and go beyond knowledge. Society has decided that one must be 16 to drive, 18 to vote, and 21 to drink. A similar requirement should be in place for assuming the risks involved with handling pesticides.
- People under 18 are not legally responsible for their actions; this has resulted in difficulty of conducting enforcement against minors.

Engaged Stakeholders: CTAG, Children's Health Protection Advisory Committee

6. Require Testing for Occupational Users to Prove Competency

Problem Statement: Currently there is no standard requiring all occupational users to demonstrate competency through testing. The absence of a minimum testing standard allows users with inadequate knowledge of pesticide safety to apply pesticides, which presents a risk to human health and the environment.

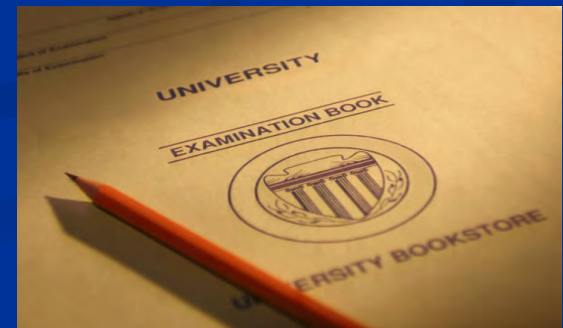
Options under Consideration:

- Establish competency standard through valid exams for occupational users, including private applicators
- Through exams, establish competency for occupational users, including private applicators

Rationale & Issues:

- Private applicators have access to the same products as certified applicators and should be required to meet the same standards of competency.
- There is wide variation in the quality of exams from state to state.

Engaged Stakeholders: CTAG



7. Standardize Exam Development and Security Requirements

Problem Statement: Not all states administer exams which measure a standard level of competency.

Options under Consideration:

- Define and require minimum standards for a secure and valid exam, such as written, closed-book, proctored and requiring positive identification
- Define and require minimum standards for a secure exam

Rationale & Issues:

- There is wide variation in state exam administration. Some states allow open book or take-home exams, while others require positive identification and closed-book exams.
- Standardized exam requirements would facilitate reciprocity between states.
- Exam standards and security would help to ensure that only those who are qualified can take exams and become certified.

Engaged Stakeholders: CTAG

8. Establish Competency Requirements Consistent With High Risk Use

Problem Statement: High risk applications currently do not require demonstration of competency commensurate with the level of risk.

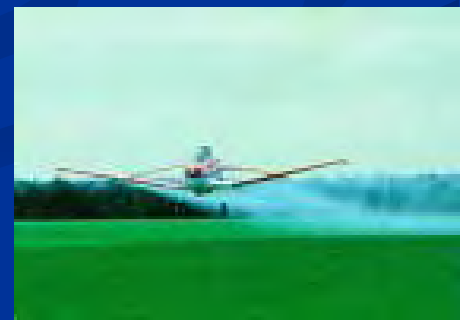
Options under Consideration:

- Establish additional exams for higher risk occupational uses
- Establish additional competency gauges for higher risk application methods

Rationale & Issues:

- Examples of high risk uses include 1080, M-44, aerial application, and fumigation treatments.
- Higher risk occupational users need to demonstrate the highest level of competency, such as taking additional exams.
- Administrative Law Judge decision on Compound 1080, the Livestock Protection Collar, set stringent standards for use. M-44 also has more specific use standards.

Engaged Stakeholders: Administrative Law Judge



9. Ensure Continued Competency of Applicators

Problem Statement: The current regulations have very vague provisions for ensuring the continued competency of applicators.

Options under Consideration:

- Federally establish recertification periods and requirements
- Establish a regular period for retesting with provisions to allow states to determine competency in the interim

Rationale & Issues:

- The regulation currently only requires that states assure a continuing level of competency and ability to use pesticides safely and properly. There is no standard for recertification requirements.
- Regular testing would assure that candidates have maintained competency in the core set of skills related to their certifications.
- Continuing education is necessary to ensure that applicators have the most current knowledge available in their fields.

Engaged Stakeholders: CTAG

10. Ensure Maintenance of Current Knowledge

Problem Statement: Existing requirements do not ensure that applicator knowledge keeps pace with the constantly evolving field of pesticide application.

Options under Consideration:

- Set federal standards for ensuring that applicators maintain current knowledge in the areas of their certification
- Establish guidelines for states to determine how to ensure current knowledge of applicators

Rationale & Issues:

- Most states could use their existing infrastructure for issuing continuing education units; a federal standard would ensure that all states meet the minimum requirements.
- Technology, equipment, risk assessments, labels and other related information is constantly changing, and applicators need to maintain knowledge in order to ensure public safety.

Engaged Stakeholders: CTAG

1. Promote Reciprocity Among States - Efficiency

Problem Statement: Wide variation among state certification categories adds to burden and inhibits reciprocity.

Options under Consideration:

- **Expand federal categories and include a provision for states to establish subcategories**
- **Standardize all categories**

Rationale & Issues:

- **Wide variation in state categories increases burden on states issuing reciprocal certificates because they must ensure the standards for certification are comparable, and they must verify the status of the applicant's certification with the other state.**
- **Standardization of categories would allow for increased applicator mobility, allowing applicators to travel across state lines to assist where needed without the burden of assuring comparability of certification from the home state. (e.g. post-Katrina)**
- **Both AAPCO and CTAG are working on the issue of reciprocity, in both emergency and everyday situations.**

Engaged Stakeholders: NAAA

2. Implement Consistent Requirements for State, Tribal and Federal Plans - Efficiency

Problem Statement: Varying state, tribal and federal plan requirements impose conflicting demands on EPA and are inconsistent

Options under Consideration:

- **Eliminate transition option for EPA to run federal, tribal and state plans**

Rationale & Issues:

- **The regulation has been in place since 1974 and transition should be complete.**
- **EPA does not have the resources to run and enforce plans for any entity.**

Engaged Stakeholders: Regulatory agencies

3. Ensure Program Accountability - Efficiency

Problem Statement: Lack of consistent requirements for program reporting inhibits ability to manage program, establish priorities and meet new program accountability obligations.

Options under Consideration:

- **Add specific reporting requirements to the rule**
- **Add requirement to refer to EPA document on measurement reporting requirements in the rule**
- **Encourage voluntary reporting**

Rationale & Issues:

- **Currently there are no standardized reporting requirements to ensure efficient program operation and management.**
- **Uniformly reported data will facilitate the development of program measures and can be analyzed for targeted outreach.**

Engaged Stakeholders: OMB PART

Change Areas for Ag Worker Protection Regulation (40 CFR 170)

Protective: Inform Workers

1. Ensure meaningful hazard communications
2. Ensure meaningful training
3. Require trainers to demonstrate competency
4. Establish training verification system
5. Protect children from pesticide-treated fields



Efficiency

1. Clarify vague WPS provisions
2. Clarify exceptions
3. Exempt certified crop advisors & aerial applicators
4. Require handlers to demonstrate competency
5. Express regulation in plain English
6. Assure program accountability

1. Ensure Meaningful Hazard Communication

Problem Statement: Current regulation hazard notification efforts do not provide workers with adequate protection.

Option under Consideration:

- Submit new, updated proposal based on pilot results

Rationale & Issues:

- Centralized posting provision is inadequate. The regulation should achieve protections similar to OSHA standards for non-ag workers.
- Specific risk information is not required to be available to agricultural field workers through training or materials. Agricultural field workers need to know the risks they face in doing their work.

Engaged Stakeholders: National Assessment Workgroup,
Advocacy groups



2. Ensure Meaningful Training

Problem Statement: Retraining is only required every 5 years which is too infrequent to ensure workers know how to protect themselves. Some workers may never receive safety training because the rule allows employers to delay full training for 5 days.

Options under Consideration:

- **Eliminate grace period and shorten retraining period**
- **Shorten or eliminate grace period**

Rationale & Issues:

- **Meaningful training is a cornerstone of effective worker protections.**
- **5 year retraining interval reduces likelihood workers will retain the safety principles to better protect themselves.**
- **Rule allows full training of ag field workers to occur up to 5 days after they enter fields. During this time a worker could work in the field & leave without full training, which presents a gap in protection.**

Engaged Stakeholders: National Assessment Workgroup, Advocacy groups

3. Ensure Competency of Trainers

Problem Statement: Trainers influence behavior and are a primary source of information, but are not required to demonstrate competency as educators.

Options under Consideration:

- Establish verification of competency for all trainers of ag field workers

Rationale & Issues:

- Current requirements allow any certified applicator or handler to provide pesticide worker safety training, regardless of their knowledge of training requirements or ability to teach.
- The Train-the-Trainer pilot results indicated that participants are more successful trainers.
- An applicator must pass a competency gauge, but a worker has no such gauge; therefore, the trainer must be competent to train in order to assure the worker receives effective safety training.

Engaged Stakeholders: Advocacy groups, Agricultural employers

4. Create a Meaningful Training Verification System

Problem Statement: Agricultural worker training is not adequately verified and tracked.

Options under Consideration:

- Establish a training verification and tracking system
- Require trainer to keep and submit records

Rationale & Issues:

- A training verification system would allow inspectors to request training records on-site and to determine whether or not WP training has been conducted for all workers.
- A reliable verification system would give ag employers relief from duplicative training efforts.
- The verification system could include training verification cards, and mandate that either employers or trainers maintain records of training, and possibly submit them to the state.

Engaged Stakeholders: States, Advocacy Groups

5. Protect Children From Pesticide Treated Areas

Problem Statement: There is no general requirement to keep children out of pesticide-treated areas.

Options under Consideration:

- Add statement on the labels prohibiting children (age xx) in specified, pesticide treated areas
- Stress effects of pesticides on children in WP training

Rationale & Issues:

- Data suggests children who are not employed are accompanying their parents in the field.
- Children are more vulnerable to pesticide exposure than adults.

Engaged Stakeholders: National Assessment Workgroup, Children's Health Protection Advisory Committee, Advocacy groups



1. Clarify Regulation Provisions That Are Vague - Efficiency

Problem Statement: Regulatory language is complex and coverage requirements need clarification.

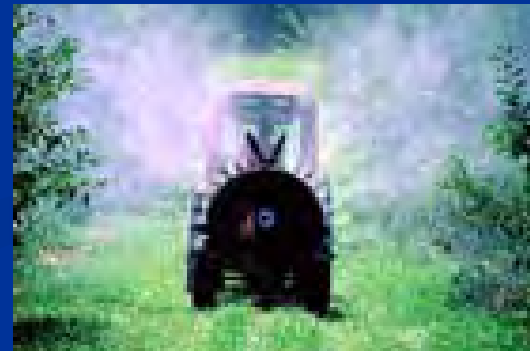
Options under Consideration:

- Define and clarify vague provisions to make them enforceable
- Define and clarify some vague provisions to make them enforceable

Rationale & Issues:

- Vague, poorly defined provisions (enclosed cab, closed systems, respirator use, exceptions) put workers and agricultural handlers at risk and pose enforcement problems.

Engaged Stakeholders: Advocacy groups, States



2. Reclassify Coverage of Pesticide Handlers - Efficiency

Problem Statement: handlers, those who can mix, load and apply pesticides under the worker protection regulation, are not required to demonstrate competency.

Options under Consideration:

- **Eliminate handler training requirements from the worker protection regulation and establish handler certification requirements in the applicator certification regulation**

Rationale & Issues:

- **Any occupational user with access to pesticides should be required to demonstrate competency.**
- **Refer to earlier discussion of expanding scope of applicators requiring competency demonstration**

Engaged Stakeholders: Agricultural employers, Advocacy groups

3. Consolidate Exceptions Into the Regulation - Efficiency

Problem Statement: Two exceptions, irrigation and early-entry low contact, are not included in the regulation

Options under Consideration:

- **Clarify the exceptions and include them as part of the regulation**
- **Clarify one exception and include it as part of the regulation**

Rationale & Issues:

- **All of the requirements and exceptions associated with the WPS should be part of the rule instead of separate actions.**
- **The irrigation exception includes “unforeseen” circumstances, which should be removed, because there is no instance where irrigation would be unforeseen.**

Engaged Stakeholders: Agricultural Employers, Regulatory Agencies

4. Clarify Coverage of Aerial Applicators and Crop Advisors - Efficiency

Problem Statement: Crop advisors and aerial applicators have training and PPE requirements in the regulation, although their risk profile is more aligned with that of certified applicators.

Options under Consideration:

- Remove all references to crop advisors and aerial applicators from the regulation and include them in the applicator certification regulation
- Exempt crop advisors and aerial applicators, certified under the applicator certification regulation, from the worker protection regulation provisions; require all others to comply with the worker protection regulation provisions

Rationale & Issues:

- Many states certify aerial applicators.
- Both crop advisors and aerial applicators have associations that provide continuing education programs, which would reduce burden on the states to meet the needs of these applicators.

Engaged Stakeholders: NAAA, Crop Advisor Associations

5. Simplify Regulatory Language - Efficiency

Problem Statement: Regulatory language is complex and should be expressed in plain English.

Options under Consideration:

- Rewrite the worker protection regulation in plain language
- Focus on simplifying language for complicated provisions

Rationale & Issues:

- There is an EPA-wide move towards writing plain language regulations.
- The general training workgroup, formed as part of the National Assessment of the Worker Protection Program, suggested simplifying the language of the regulation.

Engaged Stakeholders: General Training Workgroup

6. Ensure Program Accountability - Efficiency

Problem Statement: Lack of consistent requirements for program reporting inhibits ability to manage program, establish priorities and meet new program accountability obligations.

Options under Consideration:

- Add a requirement for states to report on needed data which refers to an EPA document describing the data needs for measures
- Add specific reporting requirements

Rationale & Issues:

- Currently there are no standardized reporting requirements to ensure efficient program operation and management.
- Uniformly reported data will facilitate the development of program measures and can be analyzed for targeted outreach.

Engaged Stakeholders: OMB PART

Label Regulations Ensure That Labels Reflect More Protective Regulations – Implementation

- 1. Amend labeling rules to make applicator certification changes enforceable**
- 2. Amend labeling rules to make agricultural worker protection changes enforceable**

Process: Implementation

We are early in the process of developing the rule. Immediate next steps include:

- **Creating a draft of regulatory language**
- **Outlining and drafting the preamble**
- **Ensuring significant stakeholder involvement**
- **Initial thinking on an implementation plan that includes a communication strategy, training and guidance**

Over the last 5 years, extensive work with a wide range of stakeholders has produced a focused set of suggested improvements which will simplify rule development process.

Controversial nature of subject justifies significant coordination with all interested stakeholders to ensure that they understand & are able to express opinions within the rulemaking context. The process will include stakeholder coordination through

- **PPDC updates at meetings and the work of this committee;**
- **Regional, state and tribal updates at regular meetings; and**
- **Presentations and discussions at relevant stakeholder meetings**

Process: Tentative Schedule

- **November 2005** – Publish in the regulatory agenda (FR Notice)
- **January 2006** – Convene Agency Workgroup
- **January 2006** – Establish PPDC subgroup
- **February 2006** – First meeting of PPDC subgroup
- **March 2006** – Finalize blueprint, the regulatory action plan
- **June – September 2006** – Second meeting of PPDC workgroup
- **July 2006** – First draft of regulatory language; review draft economic analysis
- **November 2006** – Hold options selection meeting
- **August 2007** – Publish draft rule for public comment

Stakeholder Input

- **Short-term**
Provide feedback on scope and content
- **Future**
Respond at critical junctures

