

FINAL REPORT

**Small Business Advocacy Review Panel on
EPA Planned Revisions to
Two Related Rules:**

**Worker Protection Standard for Agricultural
Pesticides (RIN 2070-AJ22); and
Certification of Pesticide Applicators (RIN 2070-AJ20)**

November 3, 2008

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1. INTRODUCTION

This final report is presented by the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened to consider the proposed rulemaking on revisions to two related rules: the Worker Protection Standard for Agricultural Pesticides (RIN 2070-AJ22) and Certification of Pesticide Applicators (RIN 2070-AJ20). Possible revisions are currently being developed by the U.S. Environmental Protection Agency (EPA or the Agency). Under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), a Panel must be convened prior to publication of the initial regulatory flexibility analysis (IRFA) that an Agency may be required to prepare under the RFA. In addition to EPA's Small Business Advocacy Chairperson and the Director of the Field and External Affairs Division of the EPA Office of Pesticide Programs, the Panel members are the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of the Small Business Administration (SBA).

This report includes the following:

- Background information on the proposed rules being developed;
- An overview of regulatory revisions under consideration;
- Information on the types of small entities that would be subject to the proposed rule;
- A description of efforts made to obtain the advice and recommendations of representatives of those small entities;
- A summary of the small entity comments submitted to the SBAR Panel; and
- Panel recommendations.

Section 609(b) of the RFA directs the Panel to report on the comments of Small Entity Representatives (SERs) and make findings on issues related to certain elements of an IRFA under section 603 of the RFA. Those elements of an IRFA are:

- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule may apply;
- Projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which may be subject to the requirements and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all other relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and
- Any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

The Panel's final report is provided to the EPA for consideration in developing the proposed rule and should be included in the rulemaking record. In light of the Panel report, and where appropriate, the Agency should also consider whether changes are needed to the IRFA for the proposed rule or the decision on whether an IRFA is required.

The Panel's findings and discussion are based on the information available at the time the final Panel report was drafted. EPA will continue to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process. The Panel makes this final report at a preliminary stage of rule development and the Agency should consider the report in that light. At the same time, the report provides the Panel and the Agency with an opportunity to identify and explore potential ways of shaping the proposed rule to minimize the burden of the rule on small entities while achieving the rule's purposes.

Any options identified by the Panel for reducing the rule's potential regulatory impact on small entities may require further analysis and/or data collection to ensure that the options are practicable, enforceable, environmentally sound, and consistent with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its amendments.

2. BACKGROUND

2.1 Regulatory History

The two regulations being considered for change are described below. The proposed changes to the two rules are being developed concurrently.

2.1.1 The Agricultural Worker Protection Standard (WPS)

In 1974, EPA promulgated the Agricultural Worker Protection Standard (WPS) rule in 40 CFR Part 170, based on the 1972 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In that rule, four basic requirements to protect farm workers performing hand labor activities were established:

- A prohibition against spraying workers and other persons
- A general reentry interval for all agricultural pesticides prohibiting reentry into treated fields until the spray had dried or the dust had settled and longer intervals for 12 specific pesticides
- A requirement for protective clothing for any worker who had to reenter treated fields before the specific reentry period had expired
- A requirement for "appropriate and timely" warnings.

In 1983, an Agency review of the existing standards concluded that the regulations were inadequate to protect these workers. A public participation process was initiated in 1985, but representatives of farm worker unions ended their participation. Despite this, EPA issued a proposed rulemaking in July 1988 that proposed expanding the scope of coverage to pesticide handlers and others working on agricultural establishments, among other enhancements. A series of public meetings was held to inform the affected communities about the proposal. Comments in response to the proposal were considered and addressed, and the proposed

requirements were substantially revised when the final rule was issued in August 1992, becoming effective in 1995. This regulation was intended to:

- Eliminate or reduce exposure to pesticides
- Mitigate exposures that do occur
- Inform employees about the hazards of pesticides

After the 1995 implementation, the Agency initiated a program assessment based on issues brought forward by stakeholders, by a planned program evaluation, the Government Accountability Office (GAO) and Children's Health Protection Advisory Committee (CHPAC). This national assessment process included meetings in the major agricultural areas with significant production and labor, and the establishment of workgroups to address the issues.

A number of issues were raised through the national assessment process. Our State and extension partners have been involved with the regulations' development through regular meetings and a workshop program. In 2006 and 2007, the initial set of proposed rule changes was shared with the Pesticide Program Dialogue Committee (PPDC), a stakeholder committee under the Federal Advisory Committee Act (FACA) which provides input to the Pesticide Program.

2.1.2 The Certification of Pesticide Applicators

The Certification of Pesticide Applicators rule has been largely unchanged since promulgation in 1974 and 1975 (40 CFR Part 171). In 1985, a taskforce consisting of federal agencies, agricultural trade associations and farm worker advocates was appointed by EPA to review the program and policies to identify areas for improvement. In August of that year, the taskforce provided a report to EPA. Based in part on that report, EPA proposed changes to the regulations in 1990, but the proposed changes were never made final. In 1996, OPP established the Certification and Training Assessment Group (CTAG) to define the national direction of the pesticide applicator certification and training program. This group consisting of EPA, state regulatory agencies and university agricultural extension, has made a number of recommendations to improve the program. Some of these recommendations can only be addressed through a regulatory change.

As described above, our State lead agencies and university agricultural extension partners have been involved with the Certification regulation development through regular meetings and workshops. In 2006 and 2007, the initial set of proposals was shared with the PPDC.

2.2 Description and Scope of the Existing Rules

2.2.1 The Agricultural Worker Protection Standard (WPS)

In 1992, EPA issued the current WPS regulations governing the protection of employees on farms, forests, nurseries, and greenhouses from occupational exposure to agricultural pesticides (40 CFR Part 170). The regulations are designed to protect agricultural workers and pesticide handlers who are occupationally exposed to pesticides. The regulations contain exposure

reduction measures to reduce the risk of pesticide poisonings and injuries among agricultural workers and pesticide handlers.

Basic elements of these regulations include:

- **Protection during applications:** Applicators are prohibited from applying a pesticide in a way that will expose workers or other persons. Workers are excluded from areas while pesticides are being applied.

- **Restricted-entry intervals:** Restricted-entry intervals must be specified on all plant agriculture pesticide product labels. Workers are excluded from entering a pesticide treated area during the restricted-entry interval, with only narrow exceptions.

- **Personal protective equipment:** Personal protective equipment must be provided and maintained for handlers and early-entry workers.

- **Notification of workers:** Workers must be notified about treated areas so that they may avoid inadvertent exposures.

- **Decontamination supplies:** Handlers and workers must have an ample supply of water, soap and towels for routine washing and emergency decontamination.

- **Emergency assistance:** Transportation must be made available to a medical care facility if a worker or handler may have been poisoned or injured. Information must be provided about the pesticide to which the person may have been exposed.

- **Pesticide safety training and safety posters:** Training is required for all workers and handlers, and a pesticide safety poster must be displayed.

- **Access to labeling and site specific information:** Handlers and workers must be informed of pesticide label requirements. Central posting of recent pesticide applications is required.

2.2.2 The Certification of Pesticide Applicators

Certain pesticide products may cause unreasonable adverse effects on human health and/or the environment if used in a manner inconsistent with their labeling. To address this risk, EPA may limit their availability and application through designation as Restricted Use Products. Only persons holding valid pesticide applicator certification may purchase and use these products, with limited exceptions. Standards established by regulation by EPA are used by the States to develop ways to gauge the competency of candidate applicators. The Applicator Certification rule seeks to protect public health and the environment, including applicators, from potential adverse risks of these products.

Definitions and basic elements of this regulation include:

- **Private applicator:** A private applicator uses or supervises the use of restricted use pesticides for the purpose of producing an agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than the trading of personal services between producers of agricultural commodities, on the property of another person.

- **Standards for certification of private applicators:** Private applicators must show a practical knowledge of pest problems and control practices associated with their agricultural operations; proper storage, use, handling and disposal of pesticides and containers; and legal responsibility. This knowledge must include the ability to recognize common pests and damage caused by them; read and understand label and labeling; apply pesticides according to label instructions and warnings; recognize local environmental situations to be considered during application to avoid contamination; recognize poisoning symptoms and procedures to follow in case of a pesticide accident. Competence of private applicators shall be verified through a certification system administered by the responsible state, territorial or tribal agency. The state, territory or tribe may use a written or oral test, or an equivalent system approved by EPA in their plan.

- **Commercial applicator:** A commercial applicator uses or supervises the use of restricted use pesticides for any purpose or on any property other than as provided by the definition of "private applicator."

- **Standards for certification of commercial applicators:** Commercial applicators must demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides. Competence shall be determined on the basis of a written exam and, as appropriate, performance testing in the following areas: label and labeling comprehension, safety, environment, pests, pesticides, equipment, application techniques, and laws and regulations. In addition, tests shall be given on the particular category of the applicator's certification.

- **Categories of commercial applicator certification:** States, territories and tribes are required to adopt the following pest control categories to the extent they will be used in that State, territory, or tribe: agricultural (plant and animal); forest; ornamental and turf; seed treatment; aquatic; right-of-way; industrial, institutional, structural and health related; public health; regulatory; demonstration and research. A state, territory or tribe may submit a plan to EPA requesting approval to add or delete categories.

- **Continuing level of competency:** All states, territories and tribes must ensure that certified applicators maintain a continuing level of competency. Generally, this involves training and recertification every three to five years.

2.3 Related Federal Rules

2.3.1 The Agricultural Worker Protection Standard (WPS)

The Occupational Safety and Health Administration's (OSHA) Hazard Communications Standard (HCS) is the main federal regulation designed to protect employees from chemical hazards in the workplace. In industries where chemicals are commonly used, OSHA has established that employees have a right to know about the chemical hazards in their workplace so they can make informed decisions about their work practices and protect themselves.

The HCS technically applies to the agricultural industry, but in practice it is enforced on a limited number of agricultural establishments because OSHA is prohibited from enforcing it on farms with 10 or fewer employees unless the farm has a temporary labor camp.

EPA has established requirements to protect agricultural pesticide workers exposed to pesticides under the WPS that are essentially equivalent to the HCS; therefore, OSHA established a policy agreeing not to cite employers who are covered under EPA's final WPS rule with regard to HCS requirements for pesticide hazards. Employers on OSHA covered agricultural establishments remain responsible for compliance with the HCS for other non-pesticide chemical hazards, as well as other OSHA standards for agriculture at 29 CFR part 1928, such as the Field Sanitation Standard (29 CFR § 1928.110).

2.3.2 The Certification of Pesticide Applicators

OSHA provides Hazard Communications requirements coverage for the employees using non-restricted use pesticides and in industries other than agriculture (where they are covered under the WPS). However, OSHA defers to EPA for requirements for employees who use restricted use products, such as certified pesticide applicators.

3. OVERVIEW OF REVISIONS UNDER CONSIDERATION

Through Agency deliberations and stakeholder input, a broad range of program improvements have been suggested. From these EPA identified those which could only be addressed through a regulation change, and further limited to those which would provide the most protective impact. The following is a listing of regulatory revisions currently being considered and evaluated by EPA and were presented to the SERs for their reaction. This listing is not intended to limit the Agency's consideration during the development of the proposed rule. These potential revisions for proposal are organized by type of improvement within each rule.

3.1 Worker Protection Standard for Agricultural Pesticides

- **Improve effectiveness of worker and handler training:**
 - Reduce retraining interval
 - Expand training contents
 - Eliminate grace period before full worker training

- Improved worker trainer competency
- Establish training recordkeeping by employers
- **Improve protections to workers during Restricted Entry Intervals (REI):**
 - Ag employer provide notifications to workers when directing early entry (during REI) to a treated area
 - Oral and written notifications
 - Limit duration of early entry during agricultural emergency
 - Keep records of workers in a treated area during the REI
 - Post warning signs at treated area for any pesticide application that has an REI
 - Improve content of warning signs for posting at treated areas during REI
- **Improve protections for workers during pesticide applications:**
 - Add requirement for application entry restricted areas for farms/forests similar to those in place for nurseries and greenhouses
- **Improve hazard communication protections:**
 - Expanded information on application and hazard to be available
 - Specify when application information must be recorded and retention period
 - Require handler employer (commercial applicators) to notify agricultural employer of any changes in application within specified time period
- **Improve effectiveness of safety poster:**
 - Expand poster content to match expanded training points
 - Add requirement for poster at decontamination supply location
- **Improve protections for employees of Certified Crop Advisors:**
 - Require personal protective equipment (PPE) for entry during REI
 - Provide decontamination supplies
- **Improve effectiveness of decontamination supplies:**
 - Improve eyeflush water supply requirements for workers and handlers
 - Increase amount of water available to handlers at mix/load site
 - Require shower and changing area for all handlers
- **Improve effectiveness of emergency information:**
 - Specify information to be provided and time allowed to provide it
- **Improve handler application restrictions**
 - Require handlers to cease application if workers enter restricted area around treated area
 - Improve protections from cholinesterase inhibition to handlers by restricting amount of time per month they may apply organophosphate and carbamate products or by cholinesterase monitoring for those who apply organophosphates and carbamates

- **Improve effectiveness of Personal Protective Equipment (PPE):**
 - Require that handler either use PPE or approved closed systems with specified standards
 - Eliminate substitution of an enclosed cab for labeled respirator requirement
 - Require maintenance of enclosed cabs and closed systems, with record-keeping
 - Require medical monitoring and fit testing for all handlers who use respirators

3.2 Certification of Pesticide Applicators

- **Add commercial applicator categories and sub-categories to ensure specific competency for potentially high-risk scenarios:**
 - Aerial application
 - Fumigation
 - Chemigation
 - M-44 and Compound 1080
- **Ensure competency of commercial applicators:**
 - Establish minimum age for commercial applicators
 - Establish requirements for administration of commercial applicator exams
 - Written
 - Proctored
 - Closed-book
 - Positive identification
 - Standardize and better define re-certification requirements
- **Ensure competency of private applicators:**
 - Establish minimum age for private applicators
 - Establish requirements for administration of private applicator exams
 - Written
 - Proctored
 - Closed-book
 - Positive identification
 - Amend competency standard to be more comparable to commercial applicator standard
 - Standardize and better define recertification requirements
- **Ensure competency of non-certified applicators applying Restricted Use Pesticides (RUP) under the supervision of a certified applicator:**
 - Define and develop the following requirements regarding applicator competency for certified applicator and those applying under the supervision
 - Appropriately trained
 - Maintain records of training
 - Copy of label provided to & carried by applicator
 - Means of instant communication between applicator & supervising certified applicator

- Require minimum age for applicator under the supervision

4. APPLICABLE SMALL ENTITY DEFINITIONS

The Regulatory Flexibility Act (RFA) defines small entities as including “small businesses,” “small government jurisdictions,” and “small organizations” (5 USC 601). The regulatory revisions being considered by EPA for these two rulemakings are expected to affect a variety of small businesses, but would not affect any small government jurisdictions or small organizations. The RFA references the definition of “small business” found in the Small Business Act, which authorizes the Small Business Administration to further define “small business” by regulation. The SBA defines small business by size standards using the North American Industry Classification System (NAICS) (13 CFR 121.201).

The detailed listing of SBA definitions of small business for affected industries or sectors, by NAICS code, is included in Tables 1 and 2 in Section 5, below.

5. SMALL ENTITIES THAT MAY BE SUBJECT TO THE PROPOSED REGULATION

The following tables list industries/sectors potentially affected by the two regulations. The EPA name for each industry/sector is generally the terminology used in the current regulations, followed by the corresponding NAICS name and code. The estimated number of small firms within each NAICS code, and the number of employees in those small firms, is also presented.

Table 1: Industry Sectors, Definitions & Number of Small Entities Potentially Affected by Proposed Amendments to the Worker Protection Standard

EPA Name for Industry/Sector	2002 NAICS Name for Industry/Sector	2002 NAICS Code	SBA Definition for Small Business	Small Farms/Firms	
				Number	Employees
Agricultural Establishment / Farm	Crop Production	111000 (not 111421)	< \$750,000 annual gross revenue	887,297	1,074,932
Agricultural Establishment / Nurseries & Greenhouses	Nursery and Tree Production	111421	< \$750,000 annual gross revenue	59,452	154,788
Agricultural Establishment / Forest	Timber tract operations	113110	< \$7.0 million annual gross revenue	528	1,753
Agricultural Establishment / Forest nurseries	Forest Nurseries and Gathering Products	113210	< \$7.0 million annual gross revenue	1,153	5,164

EPA Name for Industry/Sector	2002 NAICS Name for Industry/Sector	2002 NAICS Code	SBA Definition for Small Business	Small Farms/Firms	
				Number	Employees
Commercial Pesticide Handling (Forestry)	Support Actives for Forestry	115310	< \$7.0 million annual gross revenue	63	280
Commercial Pesticide Handling (Farms - Ground and aerial)	Soil Preparation, Planting, and Cultivating	115112	< \$7.0 million annual gross revenue	4,634	19,144
Crop Advisor	Entomological service, agricultural	Part of 115112	< \$7.0 million annual gross revenue	2,625	12,476
	Agricultural consultants and Entomological consultants	Part of 541690	< \$7.0 million annual gross revenue		
	Agricultural research and Chemical laboratory, except testing	Part of 541710	< 500 employees		
Farm Labor Contractors	Farm Labor Contractors and Crew Leaders	115115	< \$7.0 million annual gross revenue	654	6,946

Table 2: Industry Sectors, Definitions & Number of Small Entities Potentially Affected by Proposed Certification of Pesticide Applicators Amendments

EPA Name for Industry/Sector	2002 NAICS Name for Industry/Sector	2002 NAICS Code	SBA Definition for Small Business	Small Farms/Firms	
				Number	Employees
Firms Employing Commercial Applicators					
Agricultural pest control/animal	Support Activities for Animal Production	115210	< \$7.0 million annual gross revenue	3,891	11,632

EPA Name for Industry/Sector	2002 NAICS Name for Industry/Sector	2002 NAICS Code	SBA Definition for Small Business	Small Farms/Firms	
				Number	Employees
Agricultural pest control/plant ¹ (aerial and ground application)	Soil Preparation, Planting, and Cultivating (only aerial and ground application sectors)	115112	< \$7.0 million annual gross revenue	4,634	19,144
Forest Pest Control (Forests, forest nurseries, & forest seed)	Support Activities for Forestry	115310	< \$7.0 million annual gross revenue	63	280
Ornamental & Turf Pest Control (trees, shrubs, flowers, grass)	Landscaping Services (only applicable pest control sectors and not right-of-way)	561730	< \$7.0 million annual gross revenue	59,893	186,549
Right-Of-Way Pest Control	Landscaping Services (right-of-way pest control only)	561730	< \$7.0 million annual gross revenue	1,464	8,069
Industrial, institutional, structural & health related pest control (Pest Control Operator)	Exterminating and Pest Control Services	561710	< \$7.0 million annual gross revenue	20,584	87,392
Industrial, institutional, structural & health related pest control (Wood Preservation)	Wood Preservation	321114	< 500 employees	568	10,726
Research & Demonstration (includes some crop advisors)	Research & Demonstration in physical engineering & life sciences	541710	< 500 employees	635	6,484

¹ Same as WPS "Commercial Pesticide Handling," but using terminology found in Certification regulations.

EPA Name for Industry/Sector	2002 NAICS Name for Industry/Sector	2002 NAICS Code	SBA Definition for Small Business	Small Farms/Firms	
				Number	Employees
Firms Employing Private Applicators					
Agricultural Producers / Farms / plant	Crop Production	111000 (not 111421)	< \$750,000 annual gross revenue	887,297	1,074,932
Agricultural Producers / nurseries & greenhouses	Nursery and Tree Production	111421	< \$750,000 annual gross revenue	59,452	154,788
Agricultural Producers / Farms / animal / cattle feedlots	Cattle Feedlots	112112	< \$2.5 million annual gross revenue	53,173	37,344
Agricultural Producers / Farms / animal / all other	Animal Production	112000 (not 112112)	< \$750,000 annual gross revenue	1,041,922	676,843
Agricultural Producers / Forests / logging	Logging	113310	< 500 employees	9,710	51,691
Agricultural Producers / Forests / other	Timber Tract Operations	113110	< \$7.0 million annual gross revenue	1,681	6,917
	Forest Nurseries and Gathering of Forest Products	113210			
Other					
Pesticide Registrants ^a	Pesticide and other agricultural chemical manufacturing	325320 and various others	< 500 employees (for 325320)	1,658	64,662
Notes: ^a Based on the profile of pesticide registrants prepared for the "container rule". See Appendix D of "Economic Analysis of the Bulk Pesticide Container Design and Residue Removal Standards," July 20 2005.					

6. SUMMARY OF SMALL ENTITY OUTREACH

6.1 Small Entity Outreach

EPA has been conducting outreach to the entire stakeholder community, including small businesses, for a number of years. This outreach has included presentations and workshops such as:

- Public meetings were held in 1999 on the Worker Protection Standard in Texas, California, Florida, and Virginia to evaluate the regulation and the implementation and enforcement of the national program. Representatives from grower groups, farm worker advocates, state lead agencies for pesticide regulation, etc., participated.
- In 1997, the Certification and Training Assessment Group (CTAG) was formed of state lead agency and agricultural extension representatives to assess the Applicator Certification Program.
- A workgroup from the Pesticide Program Dialogue Committee (PPDC) has reviewed preliminary options for both rules and provided data, recommendations for change, and comments. The PPDC is an advisory committee to EPA's Office of Pesticide Programs, with membership including stakeholders with diverse interests in the benefits and risks associated with pesticides.
- State Lead Agencies have reviewed preliminary options for both rules and provided comments.

6.2 Summary of EPA's Outreach Meeting with Potential Small Entity Representatives

In January 2008, EPA began an informal outreach process to potential Small Entity Representatives (SERs) as part of the pre-SBAR panel planning process. EPA contacted States, agricultural extension agents, and organizations known to represent effected small business, such as grower associations, and various pest control industry associations, to ask them to submit the names of potential SERs. EPA looked for representatives from differing types of business involved in pesticide application and/or different crops or agricultural commodities. EPA also sought to have representatives from a number of geographic areas of the nation.

On February 12, 2008, EPA sent an e-mail to the 16 potential SERs identified by that point and provided two Fact Sheets as background for the process they were being asked to participate in:

- What Small Entities Should Know About the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act
- What Potential Small Entity Representatives Should Know About the Small Business Advocacy Review Panel Process

The e-mail also explained background concerning the two rules that are the subject of this Panel, and asked to confirm interest in participating as a SER. Four more potential SERs were later identified, for a total of 20, and the materials were sent to them.

EPA conducted a pre-panel meeting/teleconference with potential SERs on June 30, 2008, as background and preparation for the upcoming Small Business Advocacy Review (SBAR) Panel meetings and process. To help potential SERs prepare for the June 30 pre-panel meeting/teleconference, EPA sent materials to each of the potential SERs via email on June 16. A list of all materials shared with the potential SERs before the pre-panel outreach meeting is contained in Appendix A. SBAR Panel members from the Office of Advocacy of the Small Business Administration and the Office of Information and Regulatory Affairs within the Office of Management and Budget also attended the June 30 meeting. A total of 12 potential SERs participated in the meeting. EPA presented an overview of the SBAR process, an overview of the existing regulations, an explanation of the planned rulemaking and proposals being considered, and technical background.

This outreach meeting was held to provide background to the potential SERs on the existing rules, familiarize them with proposals under consideration, and to solicit their comments. EPA provided a list of questions for SERs and asked for comments on potential proposals under consideration, including alternative proposals. The Agency received written comments from seven potential SERs. Those written comments are in Appendix B. Section 8 of this document contains a summary of written comments received along with oral comments noted at the meeting.

6.3 Summary of SBAR Panel's Outreach Meeting with Small Entity Representatives

The SBAR Panel convened on September 4, 2008. The Panel decided to add one additional SER, for a total of 21 (see list in Section 7), prior to the Panel meeting with the SERs. The Panel held a formal panel outreach meeting/teleconference with SERs on September 25, 2008. Two weeks before the panel outreach meeting EPA sent materials to each of the SERs via email. A list of all materials shared with the SERs before the panel outreach meeting is contained in Appendix A.

Information presented at the meeting included:

- Guidance for SERs
- Introduction to Pesticide Worker Safety program
- Background and regulatory history, including overview of existing regulations
- Rationale for revising these regulations
- Overview of proposals under consideration
- Regulatory flexibility options for small entities
- Industry sectors, definitions and number of small entities potentially affected by proposed regulations
- List of SERs
- List of questions for consideration by SERs

This outreach meeting was held to solicit feedback from the SERs on their suggestions for the upcoming rulemakings. EPA asked that the SERs provide feedback on ideas under consideration for the proposed rulemakings and responses to questions regarding their experience with the requirements of the two existing regulations. Specifically, they were asked to provide any

alternate solutions to the potential proposals presented that provide flexibility, or decrease economic impact, for small entities while still accomplishing the goal of improved safety. The Agency received written comments from eight SERS (see Appendix B). Section 8 of this document contains a summary of written and oral comments received.

7. LIST OF SMALL ENTITY REPRESENTATIVES (SERS)

The twenty potential SERS who participated in the pre-panel outreach activities in the summer of 2008, plus a representative of the American Farm Bureau Federation added prior to convening the SBAR Panel, were selected as SERS for the official Panel process and are listed in Table 3.

Table 3. List of Small Entity Representatives

Name	Industry/Sector	Business Name & Address	E-mail Address
Cline, Ron	Aerial applicator	Cline Air Services, LLC/dba: Central Valley Helicopters 891 Prater Road Ellensburg, WA 98926	cvh@centralvalleyheli.com
Reed, Rick	Aerial applicator	Reed's Fly-On Farming 490 Airport Rd. Mattoon, IL 61938	reedfly@aol.com
Hester, John	Agricultural ground applicator	Nichols Agriservice L.L.C. 1783 Davis Ave. Box A Nichols, IA 52766	jhester@nicholsag.com
Hunt, Bill	Crop advisor	Bill Hunt Company, LLC 14400 SW 149 Terrace Miami, FL 33186	bilihun@spraytec.com
Averitt, Al	Crop advisor	Protech Advisory Services Inc. 955 Sandy Grove Road Lumber Bridge, NC 28357	aaveritt@earthlink.net
Berglund, Dennis	Crop advisor	Centrol Crop Consulting Box 367, 102 East Main Ave Twin Valley, MN 56584	dennisb@tvutel.com
Femling, Frank	Farm / apple	Afton Apple Orchard 9225 St Croix Trail S Hastings, MN 55033	cfemling@aol.com
Elmstrand, Rod	Farm / berry	Rod's Berry Farm 28624 Zodiac St NE North Branch, MN 55056	elmst002@umn.edu

Name	Industry/Sector	Business Name & Address	E-mail Address
Webb, Clint J.	Farm / cotton	Webb Farms 6430 Dixie-Barwick Rd. Boston, GA 31622	webbfarm@netzero.net
Matoian, Richard	Farm / grape	Matoian Brothers 1383 East Valley Forge Fresno, CA 93720	rmatoian@westernpistachio.org
Dasher, Randall	Farm / peanuts, seeds, & herbs	Dasher Farm 5195 180th Street McAlpin, FL 32062	dasherfarm@alltel.net
Metzler, Ryan	Farm / tree fruit	Fruita Del Sol 5026 E Townsend Fresno CA 93727	rmetzler@pearsonrealty.com
Jordan, Bill, Jr.	Farm / vegetable	William H. Jordan Farm LLC 21 Wells Road Cape Elizabeth, ME 04107	whjlr30@aol.com
Wegmeyer, Tyler	Farm / trade association	American Farm Bureau Federation Washington, DC	tylerw@fb.org
Bare, Dick	Landscape maintenance	Arbor-Nomics Turf, Inc, 800 Langford Dr., Suite A, Norcross, GA 30071	richard@arbor-nomics.com
Crenshaw, Kenny	Landscape maintenance	Herbi-Systems, Inc. 7551 Bartlett Corp. Cove East Bartlett, TN 38133	kcrenshaw@herbi-systems.com
Alonso, Lonnie	Structural pest control	Columbus Pest Control, Inc. 1510 West Broad St. Columbus, OH 43222	lonniealonso@ColumbusPestControlinc.com
Bookout, Anne	Structural pest control	Royal Fumigation Inc. 53 McCullough Drive New Castle, DE 19720	anne@royalpest.com
Carter, Bruce	Structural pest control	Carter Services, Inc. PO Box 342 Farmington, NM 87499	bruce@csipest.com
Marlowe, Jack	Structural pest control	Eden Advanced Pest Technologies 3425 Stoll Rd SE Olympia, WA 98501	jackmarlowe@edenpest.com

Name	Industry/Sector	Business Name & Address	E-mail Address
Wright, Morgan	Wood treatment	Wood Preservers, Inc. PO Box 158 Warsaw, VA 22572	mwright@woodpreservers.com

8. SUMMARY OF COMMENTS FROM SMALL ENTITY REPRESENTATIVES

The summary of SER comments on major issues for the two rules under consideration are presented below, in Tables 4 and 5. Major issues were identified using the quantity and substantive content provided in the comments received. The Panel decided to focus their discussion and recommendations on the potential proposals that were the major issues for the SERs, based on their verbal and written comments.

A brief discussion of SER comments with respect to elements of the Initial Regulatory Flexibility Analysis appears in sections 8.1 through 8.4. The full written SER comments received after both the Pre-panel and Panel meetings with them are included in Appendix B.

As described in Section 6 above, EPA and the SBAR Panel conducted outreach to potential SERs and official SERs by sending outreach packages and conducting outreach meetings (teleconferences) with them on June 30, 2008 and September 25, 2008. In addition to the oral comments that the SERs made during the outreach meetings, the Panel received written comments from a total of seven potential SERs during the pre-Panel outreach and from eight SERs during the formal Panel outreach process (including two who submitted a set of joint comments and one who re-submitted his pre-panel written comments). The written comments were distributed to all Panel members as they were received.

Because of the number of potential proposals considered, the various types of affected entities commenting, the number of comments received, and the variety of positions taken, the Panel believes that a tabular summary of SER comments best serves the reader. SER comment summary tables were prepared that briefly paraphrase SER comments from both the pre-Panel and Panel outreach processes (both oral comments at the meetings and written comments received) without repeating the same comment from the same commenter. The comment summary tables are organized with a row for each issue/potential proposal, and columns for general comments, time and cost related comments, and alternate proposals suggested by the SERs. Readers may want to refer to chapter 3 and the “Questions for Small Entity Representatives” in Appendix A for additional detail on issues and potential proposals to which the comments refer.

Table 4
Worker Protection Standard (WPS)
Summary of SER Written and Oral Comments on Major Issues
Received in Response to SBAR Pre-Panel and Panel Outreach Meetings

WPS Issue/Potential proposal	General Comments (commenter type)	Time or Cost (\$) Related Comment (commenter type)	Alternate Proposals (commenter type)
Restricted Entry Interval /Field Posting: Require All Treated Areas to be Posted	<ul style="list-style-type: none"> ▪ Time consuming and difficult. Too expensive to orally notify and post all applications. (Farm) ▪ Supports mandatory posting only for Restricted Use Products. Posting should be at usual points of entry to field. (Farm) ▪ Posting only for products requiring both oral and written notification. Workers read labels, so know Restricted Entry Intervals. Can refer to WPS. Retain central posting. (AFBF) ▪ Many fields are irregular in shape, therefore, no corners. Posting is burdensome. (Aerial) ▪ Numerous small fields of different crops makes posting difficult (Farm) 	<ul style="list-style-type: none"> ▪ Up to 1 hour per application to orally notify and post. (Farm) ▪ Costly, time consuming and difficult to enforce. Should only require points of entry, not four corners (Ag custom applicator) ▪ Posting all fields could increase cost to about one hour per day effort and a \$25 per day cost. Small farms would have higher costs than large because field size is smaller (thus more fields to post). More signs per acre on small than on large farms (Farm) ▪ Impractical to post corners of field; Leads to loss of productivity; Time consuming to post (e.g., hammering stake in ground, attaching sign to stake). (Aerial) ▪ Would take an employee out of other productive work (AFBF) ▪ Estimate 30 minutes to post a single reusable sign at point of entry. Would take at least one hour to post four corners. Some growers have many fields resulting in a heavy posting burden. (Crop advisor) ▪ EPA estimate of 15 minutes to post a field is too low. (Aerial) 	<ul style="list-style-type: none"> ▪ Central map with field marked by flags and requirement for daily worker check in. Or exempt small farms, if all workers are certified and notified at time of application. (Farm) ▪ Posting should be for Restricted Use Products only, and at each possible entry point and each corner. (Farm) ▪ Farms with less than 10 non-family employees should not be required to post, just verbal notifications. (Farm) ▪ Farms with fewer employees could orally notify rather than by posting. Perhaps institute worker sign off for oral notification. (Farm) ▪ Consider an exception to field posting for farms with a few employees. Oral notification with central posting is sufficient. (AFBF)
WPS Training/ Retraining Interval: Require More Often than 5 Years	<ul style="list-style-type: none"> ▪ Everyone retrains every year because can't verify previous training and turnover. (Farm) ▪ Retain 5-year interval. (Farm) ▪ Retain 5-year interval. (Aerial) 	<ul style="list-style-type: none"> ▪ Training burden: 30 minutes for workers, 45 minutes for handler. (AFBF) ▪ Worker training 30-60 minutes; Handler training 45- 60 minutes. Material cost is minimal. (Crop advisor) 	<ul style="list-style-type: none"> ▪ 5 years (as is) or when newly hired. Rather than reduce interval, require documentation of training. (Farm)

WPS Issue/Potential proposal	General Comments (commenter type)	Time or Cost (\$) Related Comment (commenter type)	Alternate Proposals (commenter type)
	<ul style="list-style-type: none"> ▪ Retraining interval should be same as recertification for applicators. Keep at 5 years. (Farm) ▪ Most workers trained annually. Retain 5 years – effective and not unusual burden. Growers do not check for training history. (AFBF) ▪ Train annually even if previously trained although some may not. (Crop advisor) 		
WPS Training/ Grace period: Rescind Five Day Grace Period	<ul style="list-style-type: none"> ▪ Do not eliminate grace period; bad idea. Too much in first few days. (Farm) ▪ Need grace period for flexibility. (Farm) ▪ Retain 5-day grace period. (Aerial) ▪ Support retention of grace periods. (Ag custom applicator) ▪ Need to retain a grace period for flexibility around busy schedules.(Farm) ▪ Loss of grace period would lead to earlier hiring and more cost to grower. (AFBF) 	<ul style="list-style-type: none"> ▪ Would necessitate earlier hiring which would lead to increased input cost by \$100 -200 per hire. (AFBF) 	
Decontamination: Require Showers for Handlers	<ul style="list-style-type: none"> ▪ Major burden and employees would not use. (Farm) ▪ Shower is unreasonably expensive. (Farm) ▪ Shower not justified. (Farm) ▪ Unnecessary (AFBF) ▪ Crop advisor handlers are mobile and shower facilities would be difficult and costly to provide. (Crop advisor) ▪ Ag custom applicators in the Midwest have showers, but are seldom used. (Ag custom applicator) 	<ul style="list-style-type: none"> ▪ Shower facility would cost tens of thousands of dollars. (Farm) ▪ Portable showers cost \$5000 - \$6000. Add cost of water. (AFBF) 	<ul style="list-style-type: none"> ▪ Train handlers on minimizing take-home exposure. (Farm) ▪ Additional personal protective equipment for handlers /mixer/loaders (Farm) ▪ Protect better by requiring workers to remove early entry clothing and footwear – do not allow it to be taken home (AFBF)

Table 5
Certification of Pesticide Applicators
Summary of SER Written and Oral Comments on Major Issues
Received in Response to SBREFA Pre-Panel and Panel Outreach Meetings

Certification Issue/Potential proposal	General Comments (commenter type)	Time or Cost (\$) Related Comment (commenter type)	Alternate Proposals (commenter type)
Commercial Applicator Competency: Establish Minimum Age	<ul style="list-style-type: none"> ▪ Minimum age should not exceed 14 for commercial applicators, if pass test. (Landscape maintenance) ▪ Commercial applicator 18; children of farmers age 16. (Farm) ▪ Supports ages 16 – 18 for commercial. (Farm) ▪ Minimum age for pilot's license is 18, so no impact for aerial applicator. (Aerial) ▪ Supports 18 as minimum age. (Structural pest control) ▪ One cannot understand the concept of safe and accurate application until age 18. (Ag custom applicator). ▪ No minimum age, just written test. (Farm) ▪ Supports 18 as minimum age. (Structural pest control) ▪ Commercial – 16 or 18 OK. (AFBF) ▪ Minimum for pilots makes this moot for aerial applicators. (Aerial) 		
Private Applicator Competency: Establish Minimum Age	<ul style="list-style-type: none"> ▪ Law sets minimum at age 18 for non farm. Farm children should be certified when pass test. (Farm). ▪ Supports 16. (Farm) ▪ One cannot understand the concept of safe and accurate application until age 18. (Ag custom applicator). ▪ No minimum, need to use family. (Landscape maintenance) ▪ Privates should be 15 or 16, not 12. ▪ Private – 16 OK.(AFBF) 	<ul style="list-style-type: none"> ▪ Would be forced to hire certified applicators or older workers. Could delay applications, affecting yield. (Farm) ▪ Cost to replace lost family worker: salary, unemployment and workman's comp taxes, loss of reliability. (AFBF) 	

Certification Issue/Potential proposal	General Comments (commenter type)	Time or Cost (\$) Related Comment (commenter type)	Alternate Proposals (commenter type)
Application of Restricted Use Pesticides under the supervision of a certified applicator : Establish Minimum Age	<ul style="list-style-type: none"> ▪ Minimum age of 16 for an apprentice program, but not working alone. (Structural pest control) ▪ One cannot understand the concept of safe and accurate application until age 18. (Ag custom applicator) ▪ No minimum, need to use family. (Farm) 	<ul style="list-style-type: none"> ▪ Would be forced to hire certified applicators or older workers. Could delay applications, affecting yield. (Farm). 	<ul style="list-style-type: none"> ▪ Support training or requirement for presence of certified applicator. (Landscape maintenance)
Application of Restricted Use Pesticides under the supervision of a certified applicator: Require Communication method	<ul style="list-style-type: none"> ▪ Radios and cell phones are problem in some remote areas. Generally supports good communication. Insurance companies also support. (Farm) ▪ Supports communication method rather than on-site presence. (Farm) ▪ Supports requirement for instant communication. (Ag custom applicator) ▪ While desirable, not always possible. (Structural pest control) 	<ul style="list-style-type: none"> ▪ Most, if not all, have two-way radios or cell phones, so no additional cost. ▪ For full coverage, could add several hundred if not thousands of dollars in equipment and future subscriptions (Farm) 	<ul style="list-style-type: none"> ▪ Issues that may come up and need communication should be covered in training. (Farm) ▪ Should consider distance rather than communication requirement. (Farm)

8.1 Number and Types of Entities Affected

Though the SBAR Panel did not receive specific comments on the number and types of entities that may be affected by the two rulemakings, the Panel believes that the SERs are in agreement with EPA on this matter. Tables 1 & 2 in Chapter 5 of this report, which present the industry sectors, definitions and number of small entities potentially affected by the two rules, were provided to the SERs before both outreach meetings, and were discussed at the meetings.

8.2 Potential Reporting, Recordkeeping, and Compliance Requirements

See Tables 4 and 5, above, for summaries of SER comments on potential reporting, recordkeeping, and compliance requirements for major comment generating issues (the 'Alternate Proposals', the 'General Comment' and the 'Time or Cost Related Comment' columns), and Appendix B for complete SER comments. Although some SERs commented on the added burden of recordkeeping requirements, there were also comments that suggested added recordkeeping because it would reduce other compliance burdens. One SER suggested requiring recordkeeping for training, as currently many employers train more frequently than required since they cannot determine when or if a worker has been trained. Two SERs suggested oral notification of REIs, with recordkeeping, as an alternative to posting treated areas.

8.3 Related Federal Rules

The SBAR Panel did not receive any comments from SERs on related federal rules. Section 2.3 of this report discusses related federal rules promulgated by the Occupational Safety and Health Administration (OSHA).

8.4 Regulatory Flexibility Alternatives

Tables 4 and 5 ('Alternate Proposals' column) and comments in Appendix B include regulatory flexibility alternatives raised. SERs did not offer alternatives for all potential proposals. Some of the alternative proposals were flexibilities for small entities, while others were suggested for all affected entities. The major issue SER comments are discussed below for each of the two rulemakings.

8.4.1 Worker Protection Standard for Agricultural Pesticides

For the potential proposal to require agricultural establishments to post treated areas during a Restricted Entry Interval (REI) following pesticide applications, SERs suggested several alternatives for small farms. Three SERs suggested that farms with few employees (one said less than 10 non-family employees) should be required to verbally notify employees of the REI rather than posting the field. One of these SERs suggested a worker sign off, while another suggested central posting, along with the oral notification. One SER proposed that posting should be required for Restricted Use Pesticides only, and should be at each possible entry point and each corner of the field. Another SER suggested exempting small farms from posting requirements if

all workers are certified and orally notified. The same commenter suggested an alternative of posting REIs on a central map, with daily worker check in, and fields marked by flags.

One SER suggested an alternative for the potential proposal to reduce the current five year retraining interval for workers and pesticide handlers on agricultural establishments that use pesticides. He suggested that the retraining interval not be reduced and to require documentation of training, however training would also be required when a worker is newly hired regardless of the retraining interval. This alternative appeared to be for all farms, not just small ones.

Three SERs suggested alternatives for a potential requirement that agricultural establishments provide shower facilities for pesticide handlers. One SER suggested a requirement to train handlers on minimizing take-home exposure of pesticides to handlers' family members rather than the shower requirement. Another SER suggested requiring additional PPE instead of showers. A third SER suggested better protection by requiring workers to remove early entry clothing and footwear and not allow it to be taken home, instead of the shower requirement.

8.4.2 Certification of Pesticide Applicators

Two SERs suggested alternative proposals for the potential requirement for a means of communication between a certified applicator and someone applying a RUP under their supervision. One SER suggested that issues that may arise during a pesticide application that may need communication should be covered in training, rather than requiring a means of communication during application. Another SER suggested that EPA consider a requirement for a maximum distance between the certified applicator and the person applying under the supervision, rather than a communication requirement.

9. PANEL FINDINGS AND DISCUSSION

9.1 Number and Types of Entities Affected

For a complete description and estimate of the type and number of small entities to which the proposed rules will apply, see Section 5. For the Worker Protection Standard, this includes primarily agricultural employers on farms, forests, nurseries and greenhouse establishments. For the Certification of Pesticide Applicators, affected entities include a variety of firms that apply pesticides for hire, as well as agricultural producers.

9.2 Potential Reporting, Recordkeeping, and Compliance

Both the Worker Protection Standard and the Certification of Pesticide Applicators rules are enforced by state agencies, owing to FIFRA section 26, which allows the states primary enforcement responsibility for pesticide use violations. EPA has received considerable feedback from our state regulatory partners indicating difficulty enforcing the rules, particularly the WPS, due primarily to a lack of records or information. Reporting requirements under the WPS are entirely third party reporting. That is, employers provide information to their employees to enable them to protect themselves, and do not report to EPA. Reporting requirements under the Certification rule are also primarily third party, other than state reports to EPA.

EPA would like to improve enforcement capability as a means of fostering compliance, and thereby improving protections. The improvements that EPA is considering for the WPS may include additional or more specific recordkeeping and reporting. These potential proposals include improved requirements for posting of pesticide treated areas, training, hazard communication, and emergency information.

9.3 Related Federal Rules

The Panel is aware of regulations promulgated by the Occupational Safety and Health Administration's (OSHA) to protect employees of firms affected by the WPS and Certification rules. The Hazard Communications Standard (HCS) is the main federal regulation designed to protect employees from chemical hazards in the workplace. However, OSHA established a policy agreeing not to cite employers who are covered under EPA's final WPS rule with regard to HCS requirements for pesticide hazards. The Field Sanitation Standard also provides certain protections for employees in agriculture. With respect to the Certification rule, OSHA defers to EPA for requirements for employees who use restricted use pesticides.

The proposed rules are being developed and considered within the context of the OSHA rules and current coordination between the agencies. Entities affected by the WPS and Certification rules will also need to consider OSHA's regulatory requirements for protection of employees, particularly with respect to non-pesticide hazards.

9.4 Regulatory Flexibility Alternatives

As described above, EPA is seeking to improve the standards for protection of agricultural workers from pesticide exposure and for the certification of applicators of restricted use pesticides. Because of the potential burdens and costs of meeting these standards, the Panel recommends that EPA consider and seek comments on the flexibility options described below. As one SER commented generally about compliance with the rules, flexibility is key for small entities. The Panel believes that the following flexibility options collectively have the potential to significantly reduce compliance burden without significantly compromising intended protections for human health and the environment.

9.4.1 Field Posting for Restricted Entry Intervals

Restricted-entry intervals (REI) must be specified on WPS-covered pesticide product labels. Workers are excluded from entering a pesticide treated area during the REI, with only narrow exceptions. EPA is considering a proposal to require agricultural establishments to post treated areas during a REI following pesticide applications, to warn workers of the existence and duration of the REI and to stay out.

Several SERs raised concerns about the number and placement of signs. Based on those comments, the Panel recommends that EPA consider a requirement for posting at routine or usual points of entry to the field or treated area.

Several SERs commented that the burden for numerous posting events could be high. The Panel believes that oral notification of workers is an acceptable substitute for posting for REIs of

shorter duration (e.g., 48 hours or less), as workers can more easily remember the notice for a shorter period. Therefore, the Panel recommends that EPA consider the flexibility to permit only oral notification for those pesticide applications with REIs of 48 hours or less.

9.4.2 Re-training Interval for Workers and Handlers

The current WPS requires that workers and pesticide handlers receive pesticide safety training, and that they be re-trained at least every 5 years. EPA is considering a requirement for more frequent re-training, possibly annually.

A few SERs commented that they already re-train every year, as they cannot verify whether or when employees have been previously trained, in part due to turnover in the workforce. Several SERs, including one that said most workers are re-trained annually, suggested that EPA retain the current five year re-training interval, as it is sufficient.

The Panel recognizes that there is value in re-training workers as it serves to emphasize and remind the worker of important safety principles. If EPA proposes an annual re-training requirement the Panel recommends that EPA consider flexibility for less frequent training for small entities, e.g., entities with less than 10 employees that have written documentation of the following:

1. no worker turnover
2. no new or different pesticide application information from previous years
3. previous training of workers and handlers.

9.4.3 Elimination of Grace Period for Worker Training

The current WPS requires pesticide safety training for agricultural workers but allows them to work up to five days before receiving the full training if they are given a shorter, basic training. EPA is considering eliminating this grace period for full training. The current allowance for a grace period was added primarily because at the time trainers were scarce and no training materials existed. Now these limitations have largely been addressed. Elimination of the grace period would effectively eliminate the basic training requirement.

Several SERs indicated that the grace period allows flexibility in work schedules and should not be eliminated. The Panel recommends that EPA carefully weigh the potential burden and consider flexibilities for small entities. EPA should consider programmatic flexibilities for small entities such as the Agency working with the states to increase use of training verification programs to reduce the need for unnecessary re-training and use of the grace period.

9.4.4 Shower Facility for Handlers

EPA is considering a requirement that employers of pesticide handlers make available a shower facility for their use. A few SERs said that when showers are available that employees do not use them. Several SERs commented that a shower facility would be very expensive, with some suggesting that the benefits would not be justified.

In light of SER comments, the Panel recommends that EPA limit consideration of shower facility requirements to establishments with permanent pesticide mixing/loading sites. Such a limitation would eliminate the costly requirement for many smaller entities, and limit it to establishments where pesticide use and potential for exposure is likely to be higher. Also, establishments with permanent pesticide mixing/loading sites would potentially have a lower incremental cost of adding a shower facility at that site, since such sites typically already have running water.

9.4.5 Minimum Age for Certified Applicators and Those Applying RUPs Under Their Supervision

Currently there is no federal minimum age requirement to become certified as a commercial applicator or private applicator, or for individuals to apply RUPs under the supervision of a certified applicator. EPA is considering a proposal to require a minimum age for each of these categories of applicators. The Agency's concerns for younger applicators includes their increased vulnerability to the adverse effects of pesticides, potentially lower level of competence in applying pesticides, as well as potentially poorer judgment and level of responsibility.

SERs were not in agreement on this potential proposal. Two SERs suggested no minimum age for commercial certification, as long as they can pass the examination. One SER suggested a minimum age of 14 for commercial applicators. Several SERs suggested a minimum age of 18 for all categories. A few SERs suggested 18 as a minimum age, with lower ages for family members of the employer. A few other SERs suggested 15 or 16 as the minimum on farms.

Given the SERs' comments, the Panel recommends that EPA consider a minimum age requirement of: 18 for commercial applicators; 18 for hired private applicators and 16 for family members; 18 for individuals applying RUPs under the supervision of a commercial applicator; and 16 for those applying RUPs under the supervision of a private applicator. Also, based on SER comments on the cost of replacing current younger applicators, the Panel recommends including a grandfather clause to allow currently certified private and commercial applicators to retain their certification after any minimum age requirement becomes effective.

9.4.6 Communication Method Between Certified Applicator and Individuals Applying RUPs Under Their Supervision

The current Certification rule allows non-certified applicators to apply RUPs "under the direct supervision" of a certified applicator, but does not specifically require a means of communication between the supervising certified applicator and the supervised applicator during the application. EPA is considering a proposal to require that a means of instant communication be available during such applications.

Several SERs indicated that a means of communication is necessary and/or desirable, while two cautioned that in some remote areas, communication devices do not always work well. One SER suggested that communication may not be necessary with proper training, and another said a distance requirement could replace a communication requirement.

The Panel agrees with the majority of SER comments that there should be communication capability between certified applicators and those under their supervision during RUP applications. The Panel recommends that EPA consider proposing a requirement that a means of communication between certified applicators and individuals applying RUPs under their supervision be available and employed during RUP applications.

Appendix A

List of Materials EPA shared with Potential Small Entity Representatives

(June 2008)

- Fact Sheet: What Small Entities Should Know About the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act
 - Fact Sheet: What Potential Small Entity Representatives Should Know About the Small Business Advocacy Review Panel Process
 - Power Point presentation including:
 - Guidance for SERs
 - Introduction to Pesticide Worker Safety program
 - Background and regulatory history, including overview of existing regulations
 - Rationale for revising these regulations
 - Overview of proposals under consideration
 - Regulatory flexibility options for small entities
 - Industry Sectors, Definitions & Number of Small Entities Potentially Affected by Proposed Amendments to the Worker Protection Standard and Certification of Pesticide Applicators Rule
 - List of Potential Small Entity Representatives
 - Questions for Potential Small Entity Representatives
 - GAO Report: Pesticides: Improvements to Ensure Safety of Farmworkers and Their Children
 - Pesticide Worker Safety – National Program Assessment
- Gaps in Protections from current Worker Protection Standard and Certification of Pesticide Applicators Rule

Additional Materials the SBAR Panel shared with Small Entity Representatives

(September 2008)

- Power Point presentation (revised)
- List of Small Entity Representatives (updated)
- Questions for Small Entity Representatives (revised)

Appendix B

Written Comments Submitted by Small Entity Representatives

(See separate file)