

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Statutory Authority

The statutory authority for this action is provided by Section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: March 23, 2011.

Karl Brooks,

Regional Administrator, Region 7.

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2011-0014; FRL-8867-2]

40 CFR Parts 156 and 170

Receipt of Request To Require Pesticide Products To Be Labeled in English and Spanish

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of petition and request for comment.

SUMMARY: This notice is to advise the public that the Migrant Clinicians Network and other farm worker interest groups have petitioned EPA to require all pesticide labels be available in both English and Spanish. The Agency is taking public comment on the request before responding to the petitioners.

DATES: Comments must be received on or before June 28, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2011-0014, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2011-0014. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4

p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Katie Weyrauch, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-308-0166; e-mail address: weyrauch.katie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including human health, farm worker, agricultural and environmental advocacy groups; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- iii. Explain fully why you agree or disagree; suggest alternatives and

substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used, as well as the sources of those data.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. Summary of Petition

In December 2009, the Agency received a letter from the Migrant Clinicians Network (MCN), Farmworker Justice, and other farm worker advocacy organizations requesting that EPA require labeling in Spanish, in addition to the current requirement for English, on pesticide products. While this letter focused on farm workers, people in several other types of occupations apply pesticides or are exposed to pesticides routinely, such as lawn and landscape maintenance workers, structural pest control technicians, and commercial and residential cleaning staff. People in these occupations and Spanish-speaking consumers who use pesticide products at home may also be affected by the availability of pesticide labels in Spanish. The Agency is therefore seeking comment on this request as it applies to all of these stakeholders.

Executive Order (EO) 13166 of August 11, 2000, orders federal agencies to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP). The EO further states that, "(in) carrying out this order, agencies shall ensure that stakeholders such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsible to the particular circumstances of each agency, and can be readily implemented." EPA's goals for this **Federal Register** notice are consistent with EO 13166 in that EPA is seeking public comment on the request

for EPA to require that pesticide labels be available in English and Spanish. Input from the public will inform EPA's decision whether a requirement for English and Spanish on pesticide products ensures meaningful access by LEP persons that meets the objectives of this EO.

EPA is treating this letter as a petition and is taking public comment on this request. The letter from the petitioners and EPA's response letter are located in docket EPA-HQ-OPP-2011-0014 associated with this **Federal Register** notice located at <http://www.regulations.gov>. The Agency would like the public to comment on the request for requiring labeling in Spanish, including information such as potential benefits, possible disadvantages, the potential scope of a bilingual labeling requirement, and costs. Specific questions the Agency would like the public to consider and respond to on this topic are included below in Section II.G.

B. Current EPA Provisions Relating to Pesticide Labeling in Spanish or Other Languages

Several current EPA regulations and guidance documents contain provisions relevant to the issues raised by the petition. As stated in 40 CFR 156.10(a)(3), "All required label or labeling text shall appear in the English language. However, the Agency may require or the applicant may propose additional text in other languages as is considered necessary to protect the public. When additional text in another language is necessary, all labeling requirements will be applied equally to both the English and other-language versions of the labeling."

Currently, the Agency allows a pesticide registrant to add labeling in languages other than English. The Office of Pesticide Program's first statement of policy regarding bilingual labeling occurred in Pesticide Registration (PR) Notice 88-06. PR 88-06 was revised by PR 95-2 and PR 98-10. All PR Notices can be found at http://www.epa.gov/PR_Notices/. PR 98-10 states, "A registrant may provide bilingual labeling on any product without notification. The foreign text must be a true and accurate translation of the English text. **Note:** Both language versions of the labeling must appear on a container. Foreign text may be used on all or part of the labeling."

For pesticide products subject to the agricultural Worker Protection Standard (WPS) (40 CFR part 170), EPA requires that certain portions of the pesticide label contain words or phrases in

Spanish. EPA regulations at 40 CFR 156.206(e) state:

Spanish warning statements. If the product is classified as toxicity category I or toxicity category II according to the criteria in 156.62, the signal word shall appear in Spanish in addition to English followed by the statement, "Si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle. (If you do not understand the label, find someone to explain it to you in detail.)" The Spanish signal word "PELIGRO" shall be used for products in toxicity category I, and the Spanish signal word "AVISO" shall be used for products in toxicity category II. These statements shall appear on the label close to the English signal word.

Agricultural handlers are the agricultural employees responsible for mixing, loading, and applying pesticides. EPA requires that before the handler performs a handling activity, the handler employer ensures that the handler has either read the product labeling or has been informed, in a manner the handler can understand, of all labeling requirements related to safe use of the pesticide. EPA regulations at 40 CFR 170.232(a)(1) state:

The handler employer shall assure that before the handler performs any handling activity, the handler either has read the product labeling or has been informed in a manner the handler can understand of all labeling requirements related to safe use of the pesticide, such as signal words, human hazard precautions, personal protective equipment requirements, first aid instructions, environmental precautions, and any additional precautions pertaining to the handling activity to be performed.

These requirements were established to better protect agricultural pesticide handlers covered by the WPS as they mix, load, and apply pesticides.

C. Languages Spoken in the United States and by Agricultural Handlers

The Agency recognizes that residents of the United States speak many languages, with a significant proportion of the population being Spanish-speakers. A recently published U.S. Census Bureau American Community Survey report, *Language Use in the United States: 2007*, found that of the 281 million people in the United States aged 5 and over, 55.4 million people (20% of this population) spoke a language other than English at home. Of these 55.4 million people, 62% (34.5 million) spoke Spanish. For comparison, the second most frequently spoken language was Chinese, with 2.5 million speakers, or 4.5% of people who speak a language other than English at home. Of the 34.5 million people who speak Spanish at home, 52.6% reported that they speak English "very well,"

18.3% reported that they speak English “well,” 18.4% reported that they speak English “not well,” and 10.7% reported that they speak English “not at all” (Shin, Hyon B. and Robert A. Kominski. 2010. Language Use in the United States: 2007, American Community Survey Reports, ACS-12. U.S. Census Bureau, Washington, DC).

Data from the Department of Labor’s National Agricultural Workers Survey (NAWS) show that many agricultural handlers (agricultural employees responsible for mixing, loading, and applying pesticides) have limited ability to read English. Over a three-year period, NAWS surveyors conducted nearly 6000 interviews across thirty-one states. Sixteen percent of the respondents identified themselves as “handlers,” that is, crop workers who had mixed, loaded, or applied pesticides in the previous twelve months. Fifty-three percent of handlers report their dominant language as Spanish, and 46% of handlers said that their dominant language is English. Of the handlers whose dominant language was Spanish, 13% reported that they read English “well,” 11% reported that they read English “somewhat,” 33% reported that they read English “a little,” and 43% reported that they read English “not at all.” In contrast, 65% of handlers whose dominant language was Spanish reported that they read Spanish “well.” (National Agricultural Workers Survey, public data for 1989–2009: <http://www.doleta.gov/agworker/naaws.cfm>). There may be bias in these data, as it has been noted that self-reported estimates of reading skills may be biased towards the high-end, as people often overstate their abilities in interviews (Donaldson, Stewart I. Understanding Self-Report Bias in Organizational Behavior Research, *Journal of Business and Psychology*, Vol. 17, No. 2, Winter 2002).

The National Agricultural Workers Survey reports that the average highest grade of education for all handlers (both Spanish and English-speaking) was tenth grade. A 1994 study, published in the *Journal of the American Optometric Association*, found that an 11th grade cognitive reading level is required to understand a pesticide label. This suggests that although handlers may be relatively skilled Spanish readers, they may not be able to fully comprehend the label material.

D. Current EPA Initiatives Focused on Environmental Justice as It Pertains to Spanish Speakers in the United States

1. Consumer Protection

People apply pesticides in and around their homes to control a variety of pests. One type of product used is total release foggers, also known as “bug bombs.” These pesticide products contain aerosol propellants and release their contents as a concentrated spray to fumigate an area. To ensure adequate protection of human health and the environment with respect to fogger use, EPA is working with stakeholders to make improvements to these product labels, including the use of plain language, the addition of pictograms and door hang-tags, and the provision that certain label statements appear in Spanish as well as English.

2. Agricultural Worker Protection

Agricultural workers can be exposed to pesticides through their work activities. These include farm workers, who cultivate and harvest crops treated with pesticides, and agricultural pesticide handlers, who mix, load and apply pesticides to protect crops. The WPS provides protections for both agricultural workers and handlers. For farm workers, who are exposed to pesticides through contact with treated crops but do not handle pesticides directly, the WPS establishes rules that agricultural employers must follow to minimize risks from pesticide exposure, such as those discussed in Section II B.

E. Activities of Other Regulatory Entities

The state of California reviews all marketed labels as they appear on the container, whereas EPA reviews a text-only version of the label that contains all approved information but not necessarily in the format in which it will be presented in the marketplace. Some marketed labels include full Spanish translations for home garden products or antimicrobial products, and all agricultural pesticides under the purview of the WPS include the required WPS Spanish statements (40 CFR 156.206(e)).

In Puerto Rico, restricted use pesticides (RUPs) and pesticides registered to meet Special Local Needs (SLNs) must include labeling in Spanish (Puerto Rico Pesticide Act Part II, Section 4(D)(6)(a) and Part II Section 4(G)(3)). The pesticide dealer is required to provide the supplemental Spanish labeling to the buyer. The following portions of the label are required to be translated into Spanish:

1. The precautionary statement, “Keep out of reach of children;”

2. Precautionary statements to prevent injury to humans, vertebrate animals, useful vegetation, and useful invertebrate animals, among others, and those statements required by the WPS, Endangered Species Act, and other statutes;

3. Directions for use; and

4. Pesticide use classification.

In Canada, all pesticide products produced or sold domestically require labels in both English and French.

F. Potential Scope of This Initiative

In considering this petition for bilingual labeling, the Agency is assessing the potential scope of such a requirement. EPA is considering whether the proposed bilingual labeling would improve safety and what potential effects it might have on industry and the enforcement community. Labels in English and Spanish could be required for all, or a subset of, pesticide products. Below are some potential options for bilingual labeling.

1. *Certain types of pesticide products:* Bilingual labeling could be required for agricultural pesticide products, consumer pesticide products, fumigant products, or some other classification of product.

2. *Certain use sites:* If it is determined that labeling in Spanish would be beneficial for a specific use site or commodity, products used on that use site could be required to have bilingual labeling.

3. *Products containing particular active ingredients:* Another option could be to require the products with certain active ingredients to have labeling in Spanish; therefore, all products containing chemical X could require bilingual labels.

4. *Products of particular acute toxicity categories:* Products with more toxic acute toxicity categories (Categories I or II) could require bilingual labeling.

5. *Either entire labels or portions of pesticide product labels could be required in English and Spanish.* For example, the Directions for Use section of the product labeling could be required to be bilingual, or labeling statements dealing with worker protection, such as the personal protective equipment labeling, could be required to be in both Spanish and English. Other portions of the label that could be required to be in both languages include the general labeling requirements, the ingredient statement, precautionary labeling, environmental hazards, physical/chemical hazards, labeling claims, and company name and address, among others.

The Agency acknowledges that there could be disadvantages or unintended consequences to a bilingual label recommendation or requirement, and invites public comment on the petition. The State FIFRA Issues Research and Evaluation Group (SFIREG) Pesticide Operations and Management (POM) committee submitted a letter to EPA in December 2010 outlining several concerns the committee has regarding the inclusion of labeling in Spanish on pesticide products. The December 2010 SFIREG POM letter is available in the docket. EPA is dedicated to working with SFIREG and all stakeholders to obtain information that will inform a decision on the petition for Spanish labeling of pesticide products.

G. Questions for Public Comment

EPA invites all members of the public to post comments on this Notice and the petition it addresses. Specifically, EPA would like the commenter to address the following questions. EPA also invites all interested parties to comment on any other aspects of this petition's proposal that are not directly addressed by a question below.

For the General Public:

1. *Language characteristics vary by culture, region, and other factors.* How could EPA ensure that Spanish text on pesticide product labels would be understood by all potential Spanish-speaking users?

2. *Labeling in Spanish could potentially be required for all pesticide products, for a subset of pesticide products, or for a portion of the product label as described in section II.F.* If the Agency concluded that translation of a portion or portions of the label were appropriate, which portions of the pesticide label would it be most beneficial to have in Spanish, and why? If the Agency were to limit the requirement for translation to only certain products, which products should be considered, and why? (**Note:** Please see the sample label in the docket to consider the different sections of a pesticide label.)

3. *Are there languages other than Spanish and English that EPA should consider for inclusion on pesticide labels?* Which languages? Please explain your reasoning for including a language other than Spanish or English on pesticide labels, and cite documents that would further bolster your suggestion.

For People Exposed to Pesticides:

Farm workers, lawn and landscape maintenance workers, structural pest control technicians, commercial and residential cleaning staff, residential users of pesticides, children, pregnant

or nursing women, older adults, others and advocacy groups:

4. Please describe how having labels available in English and Spanish could increase or decrease pesticide user safety.

5. How do you currently obtain information in Spanish regarding a pesticide product?

6. Please describe how farm workers, their families, and others exposed to pesticides could benefit from this proposal.

7. Would this proposal affect your day-to-day work? If so, how?

8. Which parts of pesticide labeling, if any, would be most valuable to have translated into Spanish, and why?

(**Note:** Please see the sample label in the docket to consider the different sections of a pesticide label.)

9. Would having a Spanish translation of labeling be more important for some types of products than for others? Please describe why this would be so. And if so, how should EPA select products that would bear bilingual labeling?

10. What effect would the availability of bilingual labeling have on users' understanding of label text?

11. Would pictograms or other non-language methods of communication be beneficial for communication of labeling requirements?

For Industry:

12. Do you currently sell or distribute any pesticides with Spanish labeling (other than as required by 40 CFR 156.206)? If so, why have you decided to do so and what effects has the use of Spanish labeling had on the marketing or safety of using these products? Can you quantify or give examples of any added costs or benefits that have resulted from providing your products' labels in English and Spanish?

13. What additional economic costs and/or benefits would you anticipate from having your products' labels available in Spanish as well as English? Costs might include translation, printing, or packaging. Benefits might include improved market penetration or improved customer good will. Besides any increased monetary costs, would there be other obstacles to printing bilingual labeling on your pesticide products?

14. How could electronic media be used to facilitate distribution of bilingual or multilingual labeling?

15. Apart from bilingual labeling, what past and current efforts have you made to communicate with customers or potential pesticide users who do not speak or read English fluently? What have you found to be effective or ineffective?

16. If you provide Spanish labeling, do you provide it on products nationwide or only in targeted regions? Why?

17. How could EPA implement the petitioners' proposal or a version of it efficiently and equitably?

18. Please explain whether there are any portions of a product's labeling that would not need to appear in both languages.

For the State Pesticide Regulatory Community and the Enforcement Community:

19. Are there state or local laws that conflict with the proposed bilingual labeling?

20. What potential benefits or obstacles would a federal recommendation or requirement for bilingual labeling pose to the state regulation of pesticide products?

21. What potential benefits would bilingual labeling provide and what potential costs or obstacles would bilingual labeling pose to enforcement activities?

22. Do you know of any inspection or enforcement actions involving bilingually labeled products where the existence of two languages on the label has compromised bringing the action to closure?

23. Do you know of any enforcement actions that have been taken because of, or compromised by, inaccuracies in labeling translation?

24. Do you know of misuse incidents, poisonings, or other mishaps for which the lack of availability of bilingual labels may have been a contributing factor?

25. Would a requirement that pesticides bear bilingual labeling increase or decrease the ability of people to use pesticides safely and effectively? Why?

26. If pesticide products are required to carry labeling in Spanish, what effects, if any, would you anticipate on state pesticide applicator certification programs?

List of Subjects

Environmental justice, environmental protection.

Dated: March 17, 2011.

Richard P. Keigwin, Jr.,

*Director, Pesticide Re-evaluation Division,
Office of Pesticide Programs.*

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