USDA noted that issuing training cards would assist other employers who hire already trained workers. In addition, USDA is concerned that handlers and workers that possess cards will become preferred job applicants. USDA fears that since not all states on or verification cards it will cause a burden to job applicants in states where cards are not honored and give job preference to those employees who possess cards.

The regulation establishes a training verification program that is voluntary, therefore, not all employers will participate. However, employers who do participate will relieve themselves from the burden of retraining workers who have already been trained.

Forty states, Puerto Rico and 2 tribes have entered into an agreement to issue training verification cards. Three additional states say they will be entering into an agreement. Four states already have programs that are identical to the Federal program and will issue state cards. Over 2.5 million cards have been delivered to states who have entered into the program. By law, the employer can accept the card as verification that the employee was trained.

USDA raised concern over the verification cards that have an expiration date based on the initial 5– year retraining interval date. Training cards are valid until the expiration date stated on the card. When the retraining interval is changed, these training cards will remain valid until the expiration date on the card.

### IX. Regulatory Assessment Requirements

#### A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is a 'significant regulatory action'' because it raised potentially novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The total cost of this rule depends on the combination of options under the grace period and the retraining interval selected. The costs have been estimated by EPA and are presented in the Impact Assessment for the Worker Protection Standard, Training Provisions Rule. This proposal was submitted to OMB for review, and any comments or changes made have been documented in the public record.

# B. Regulatory Flexibility Act

This rule was reviewed under the provisions of sec. 3(a) of the Regulatory

Flexibility Act, and it was determined that the rule would not have a significant adverse impact on a substantial number of small entities. The smallest entities regulated under the Worker Protection Standard, familyoperated agricultural establishments with no hired labor, are not subject to the training requirements, and therefore have no cost associated with this rule. These small entities (with no hired labor) represent about 45 percent of the agricultural establishments within the scope of the WPS. The smallest of those entities which do hire labor are those with only one hired employee. Estimated costs per worker or handler are similar for an establishment with one employee as for larger establishments, causing no significant disproportionate burden on small entities. After the first year of implementation, the average annual training costs to comply with these regulations (not including the costs already being incurred) is also very modest, estimated at about \$2.20 per worker.

The largest difference in costs per worker occurs on vegetable/fruit/nut farms, where estimated incremental first year cost per worker is \$4.13 on small farms and \$3.06 on larger farms; incremental first year cost per handler is estimated at \$11.55 for both small and large farms. The largest cost per establishment is also on vegetable/fruit/ nut farms, where incremental first year cost per establishment is estimated to be \$4.13 to \$11.55 for small (single employee) farms, and \$77.49 for the typical large farm. Incremental cost of the proposed training options is also very modest. Average incremental cost to vegetable/fruit/nut farms (all sizes), is estimated at \$37.15 the first year and \$17.51 in subsequent years.

I therefore certify that this proposal does not require a separate analysis under the Regulatory Flexibility Act.

## C. Paperwork Reduction Act

This proposal contains no information collection requirements, and is therefore not subject to the Paperwork Reduction Act.

# D. Public Docket

EPA has established a public docket (OPP-250097) containing the information used in developing this proposed rule. The public docket is open Monday through Friday from 8 a.m. to 4 p.m. and is located in Crystal Mall #2, Room 1132, 1921 Jefferson Davis Highway, Arlington, VA.

#### List of Subjects in Part 170

Environmental protection, Pesticides and pests, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements.

Dated: January 3, 1995.

#### Carol M. Browner,

Administrator.

Therefore, 40 CFR part 170 is proposed to be amended as follows:

1. The authority citation would continue to read as follows:

Authority: 7 U.S.C. 136w.

2. In § 170.130, by revising the section heading and paragraph (a)(1), removing paragraph (a)(3), and by revising paragraph (d)(2) to read as follows:

# §170.130 Pesticide safety training for workers.

#### (a) \* \* \*

(1) Requirement. The agricultural employer shall assure that each worker required by this section to be trained has been trained in accordance with paragraph (c) of this section before the worker enters, or before between the 1st and 6th day that the worker enters any area or during the first weekly training session available to each worker provided by the employer [grace period to be determined based on public comment will be insert in the final rule] on the agricultural establishment where, within the last 30 days, a pesticide to which this subpart applies has been applied or a restricted-entry interval for such pesticide has been in effect. The agricultural employer shall assure that each such worker has been trained during the last (Agency will insert 1, 3, or 5 years in the final rule based on public comment) counting from the end of the month in which the training was completed.

- \* \* \* \* (d) \* \* \*

(2) If the agricultural employer is aware or has reason to know that an EPA-approved Worker Protection Standard worker training certificate has not been issued in accordance with this section, or has not been issued to the worker bearing the certificate, or the training was completed more than (Agency will insert 1, 3, or 5 years in the final rule based on public comment) before the beginning of the current month, a worker's possession of that certificate does not meet the requirements of paragraph (a) of this section.

\* \* \* \* \*