

**Attachment D
Record of Consultations**

This attachment is available as part of the electronic **docket EPA-HQ-OPP-2011-1036** and is part of the ICR's Supporting Statement

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Summary of Questions and Responses:

(1) Publicly Available Data

- i. *Is the information that the Agency requests available from any public source, or already collected by another office at EPA or by another agency?*
 - A. Not that I am aware.
 - B. Industry has already commented the EPA on the cost burden of all of the mitigation requirements.
 - C. Part of the information is available in the public domain. The industry has already compiled the information and provided the EPA with the cost burden of the mitigations measures.
 - D. None of the public training documents, labeling, or Fumigation Management Plan (FMP) information is available in the EPA Fumigant Tool Box for DMDS. While

DMDS is subject to the requirements of the new mitigation measures, the availability of the supporting documentation does not appear to be public on the EPA site.

E. This information is not available from public sources or another office of EPA or another Agency. It can only be retrieved from work records of fumigant applicators.

o **Agency Response:** The Agency would like to clarify that the focus of this question is on the information collected in the FMP and Post Application Summary (PAS) required by fumigant labels. The Agency does not believe this kind of information can be made available unless provided by fumigant applicators performing the application. However, the Agency notes the other kinds of information available, as noted in comment (1) D, and will make sure that it is available through the Agency's website.

ii. *If yes, where can you find the information? (Does your answer indicate a true duplication, or does the input indicate that certain data elements are available, but that they don't meet our data needs very well?)*

C. USEPA docket. It is not "a true duplication". Some of it is, but not all of it is a duplication.

D. Some other documentation is available at paladin.com

(2) **Frequency of Collection**

• *Can the applicators record the information less frequently and still produce the same outcome?*

A. I cannot figure out how the information could be taken less frequently unless the EPA 1) allowed us to do FMP on a subset of our fumigated acres or 2) allowed us to develop a single FMP for the entire farm at one time (no subsequent FMP's).

B. EPA docket. Not necessarily true duplication, but might be close. EPA should have the comments from industry already.

C. Not really. Applicators need to record the information for every application. However, the amount of information can be tremendously reduced because it is either redundant or not needed. A large portion of the FMP is redundant and is a waste of time and papers.

D. It is possible that fumigations repeated in same field under same or similar conditions may be able to refer to earlier FMPs in lieu of repeating data entry. It would be necessary to retain earlier FMPs as a reference.

E. Because of the amount of information needed, reducing the frequency may not produce the same outcome.

(3) **Clarity of Instructions**

i. *The ICR is intended to require that respondents provide certain information to decrease the likelihood of applicator and bystander exposure to soil fumigants.*

- a. Based on the instructions (regulations, PR Notices, etc.), is it clear what you are required to do and how to submit such information (if requested)?
- b. If not, what suggestions do you have to clarify the instructions?

- A. For most growers, the answer would be NO. The reason that the information is not clear to most growers is the overwhelming number and volume of new regulations (even prior to the new buffer restriction regulations). Although the EPA has done an excellent job with the website and educating registrants and academia, many growers still are simply overwhelmed. The process of using registrants to train applicators will be critical for grower understanding. If it was feasible, a single page flyer from the EPA that is EASY to understand and educates growers on the changes (not specifics) would be beneficial, in essence to compliment the registrant trainings (registrants could even use this in their trainings as information coming from the EPA has more validity).
- B. The instructions are clear.
- C. The instructions are very clear.
- D. This reporting is clear.
- E. The instructions are clear and the procedures to submit the requested information are relatively straightforward.

- o **Agency Response:** The Agency has acknowledged the volume of changes throughout the Reregistration Eligibility Decision implementation process, and is the reason the Agency selected a phased approach to the mitigation implementation. For additional information on the phased mitigation approach, please visit http://www.epa.gov/oppsrrd1/reregistration/soil_fumigants/implementing-new-safety-measures.html.

The Agency has also conducted and participated in extensive outreach efforts, and continues to work closely with stakeholders to help ensure that users and enforcement personnel are prepared when these changes take effect. EPA's fumigant webpage contains a number of implementation resources, such as fact sheets, that can be found at http://www.epa.gov/pesticides/reregistration/soil_fumigants/index.htm.

- ii. *Do you understand that respondents are required to maintain records?*

- A. I would estimate yes for 98% of our applicators.
- B. Yes, assuming you mean that we are required to keep the FMPs and post-application summaries (PASs) for two years. If you mean that I, as a respondent to this ICR, need to maintain records for future feedback to the ICR, then no. I do not plan on keeping any records specifically to address any future ICR's related to this one.
- C. Yes. The FMP and PAS require keeping the records for two years.
- D. Yes.
- E. Yes.

iii. *For the activities associated with submitting information upon request, will it be difficult to submit information in ways that are clear, logical and easy to complete?*

- A. I do not understand “submitting information upon request”. As far as we know we are to document the FMP and save it for at least 2 years. If the Georgia Department of Ag shows up at the farm and wants to see our records then we will provide our records, including the FMP, to them. I am not aware of submitting any information and have not communicated such a need to any grower.
- B. No. The FMPs and PASs are clear; but do contain redundant recording of information that is easily cited on the labels, which must also be available. Instead of requiring applications to copy and paste from labels to FMPs, we should be allowed to simply cite the labels via a singular checkbox (i.e., “Have the specific GAPs for the method you are using being followed?”).
- C. No, not difficult. However, it can be reduced by eliminating the redundancy in the FMP and PAS.
- D. This is clear and not difficult.
- E. This will depend on the training and experience of the data collector for the applicator.

- o **Agency Response:** The Agency would like to confirm that the only information that must be submitted, is the FMP and PAS if requested, and notification of fumigant applications to states and tribes if required. To identify which states and tribes require notice, please visit http://www.epa.gov/pesticides/reregistration/soil_fumigants/statenotices/.

iv. *Are there forms available to assist in recording the information the Agency requests? Are they clear, logical, and easy to complete?*

- A. The FMP examples developed by (EPA) were absolutely priceless and simplified this complicated process immensely. Additionally, the PowerPoint presentations they made and allowed us to use for trainings were greatly beneficial. For the new buffer restrictions being implemented in 2013 we need the following: an additional PowerPoint presentation focused just on buffers and a web site (or some type of program that could be downloaded to a computer) that can be used to make these calculations for growers.....IT MUST BE SIMPLE!
- B. The FMP and PAS forms are clear.
- C. The FMPs and PASs are clear and easy to complete. However, they can be simplified by removing redundancy in requiring information already listed in the label.
- D. There are public documents for most fumigants on the EPA site, would be helpful to include DMDS and other registered fumigants (if any).
- E. Applicators have their own specific forms. In general, the recordkeeping is clear, logical and easy to complete.

- o **Agency Response:** The Agency’s fumigant webpage contains a number of fact sheets, which can be found at

http://www.epa.gov/pesticides/reregistration/soil_fumigants/index.htm. The Agency has also been working to develop a buffer zone calculator to make the process of calculating buffer zones easier for users. This tool is still under development, but will also be available at the Agency's fumigant webpage, which can be reached at the previously provided link.

(4) **Burden and Costs**

i. *Are the labor rates accurate?*

- A. No real experience here, looks fair to me????
- B. They seem reasonable.
- C. Yes, to the best of my judgment.
- E. The labor rates are generally accurate.

ii. *The Agency assumes there is no capital cost associated with this activity. Is that correct?*

- A. Not if you assume capital costs are fixed costs for equipment?? Equipment has to be purchased in direct response to these new regulations such as gas measuring devices, safety equipment, etc...
- B. Not really. What about the costs of buffer zone signs (signs, staples, staple guns, wood stakes)? Multiply 12,000 applications per year by 3-30 buffer zone signs per application, and industry and growers will have to consume vast quantities of paper signs (heavy paper), loads of staples, and 36,000-360,000 or more wood stakes. The signs cannot be reused due to environmental wear on the paper, but the wooden stakes can be reused in theory. What about the cost to vacate people from occupied structures, when needed, from buffer zones? What about the cost associated with static buffer zones around "difficult-to-evacuate" sites, such as prisons, which can never be unoccupied? What about the cost of air monitoring equipment? What about the costs associated with EPA's oversized buffer zones that will be implemented with the express purpose for forcing users to use more costly tarps?
- C. For most part, yes. However, there are costs that are not listed. For example, air monitoring equipment/supplies are very expensive and are not listed. Also, the cost of buffer zone posting in terms of supplies cost (to make the posts) and also the cost of gas used to drive back and forth to collect the posts can sum up to a high cost.
- D. There are expenses associated with on line training that were not "capital."
- E. Yes.

- o **Agency Response:** The Agency would like to clarify that certain aspects of the RED mitigation requirements are captured by other ICRs, such as the Worker Protection ICR, and the Data Call-In (DCI) notices that were sent to the fumigant registrants. For burden and activities for the registrants that fall outside of the scope of other ICRs, the Agency has captured them in the fumigant ICR. In addition, EPA has adjusted the costs in the revised Supporting Statement to include cost of air monitoring equipment, cost of signs, and time for removal of signs.

- iii. *Bearing in mind that the burden and cost estimates include only burden hours and costs associated with the paperwork involved with this ICR, e.g., the ICR does not include estimated burden hours and costs for conducting studies, are the estimated burden hours and labor rates accurate? If you provide burden and cost estimates that are substantially different from EPA's, please provide an explanation of how you arrived at your estimates.*
- A. I think the costs to generate and document paperwork in this document is quite accurate. Of course, it must be clear that the amount of time required to obtain the information (i.e., actual time to get fit tested, or safety trained, etc.) is not included in these calculations and are of much greater costs than the paperwork. See comments below on concerns with calculations.
- B. Labor rates seem reasonable, as already asked two bullet points above. The time burdens listed in this document need revision.
- For example, it will take much longer than 0.5 hour to read these new labels. The final Phase II labels are a labyrinth of complex and interconnected information. I would estimate that it'll take certified applicators 3 hours to read and understand each label. This is based on the number of pages (40+ pages per label) and the highly detailed and complex information on each page.
 - **Agency Response:** The Agency has modified this activity to "Understanding Requirements." Reading the label is the law for all pesticide products, but the Agency did want to capture the additional time it may take to understand the suite of fumigant mitigation measures, aside from taking the Applicator Training.
 - Table 6 suggests that it take "0 hours" to post signs. This is not accurate. Consider a field that is 30 acres large and may require 30 or more buffer zone signs. It could take 1-2 hours to post all of these signs in the appropriate places, not counting the time it takes to map the field to determine where to place the signs in the first place.
 - **Agency Response:** The Agency would like to clarify that the supporting statement included 0.13 hours for applicators to fill out the information, and 0.5 hours for handlers to post the signs. The Agency also notes that these times are taken as an average, where some fields may have many points of entry to post, and others may not. However, the Agency has decided to increase this time to 1 hour, to account for both posting and removal.
 - 12 hours for the initial FMP is a reasonable estimate. However, subsequent FMPs may not take just one hour. If it is a grower-applied application and the grower is treating the same field as the year before, then, yes, maybe consecutive year FMPs may only take one hour to complete. However, several thousand applications per year are done by custom applicators, and

these fields, product, rate, and other details can change from year to year. In these cases, each FMP may take 6-12 hours per year.

- o **Agency Response:** The Agency has estimated 12 hours for the initial FMP for every application and 1 hour to complete a FMP for the same site in subsequent years in table 6. Since the site owner and certified applicator must retain a signed copy of the FMP for 2 years, changes in product, rate, and other details may quickly be made to the FMP. The total annual burden and cost for this activity is multiplied by the number of applications, and is outlined in Table 7. Templates and online tools are currently being developed by EPA and the private sector to assist with the preparation of FMPs.
- One hour for the post-application summary sounds about right.
- Table 10, no cost is assigned to distributing fumigant training materials, handler safety information, or first responder/medical expert training materials. All of these activities require hardcopy paper documents. Applicator training manuals to prepare applicators will be dozens to hundreds of paper each. Handler safety information is just one page per person, but each application will have 2-10 handlers, times 12,000 applications per year = 24,000-120,000 handler training sheets are consumed. First responder and medical expert training documents will also consume paper.
 - o **Agency Response:** Many of the materials discussed in the comment above are available on-line. There is no requirement that these materials must be made available in paper. Initially, the Agency included the distribution of materials as a “clerical task” in all cases so the time associated with this activity is listed in the “clerical task” column. However, the Agency has since added 10 technical hours for maintaining the fumigant training materials.
- Table 11. There is a typo in the “Year 1” x “Managerial Hours and Costs” box. “230.938” should be “230,938”.
 - o **Agency Response:** The Agency has made this change.
- States need to provide their own feedback, but I would guess that state personnel will need more than 15 minutes (per Table 12) to review paperwork for compliance and enforcement. It might take them 30-60 minutes per application, but you need to ask the states directly.
- Table 14. Only EPA can give feedback on whether these time and cost estimates are accurate.

- Tables 16 and 17 are probably low, given that these are some missing costs (see above), and underestimates of how long some of these documentation requirements take.
 - **Agency Response:** Please see the Agency's responses to the other points on question 4 made by respondent B.

C. Table 6, Posting: posting large fields take a long time (2 hours for measuring, mapping, and posting).

- **Agency Response:** The Agency has changed this to 1 hour for posting and removal.

Table 6, FMP: It is true that it takes 12 hours for the initial FMP, but it might take 3 to 6 hours the next year. If the area is slightly changed, then a minimum of 6 hours is needed.

- **Agency Response:** Please see the Agency's response on FMPs in the response to (4) B.

Table 10, Fumigant training materials, etc. can have a high cost. My estimates are that the items in Table 10 cost at least twice the listed costs.

- **Agency Response:** The Agency acknowledges the high cost of fumigant training materials, which is why the estimate in Table 10 is actually multiplied by the number of registrant task forces to yield the total registrant burden for fumigant training. Additionally, while the Agency has required the availability of Applicator Training that must include certain elements, the ICR does not account for activities that exceed the Agency required elements.

D. Arkema (uses a percentage of) the time of one employee to conduct the applicator training (and the cost is greater than that listed in the table).

- **Agency Response:** Please see the Agency's response to the cost of fumigant training materials directly before this comment.

E. There are some areas that need further consideration as follows:

- Table 6, Page 14 has the assumption that reading the label has a burden of ½ hour per year. As the metam labels are 68 pages in length, this estimate is very low. Also, applicators may be involved in multiple applications over the course of the season/year. A more reasonable estimate would be 2-3 hours.
- Table 6, Page 14 indicates ½ hour to post field signs. However, sign removal is not accounted for. Sign removal requires a separate, specific trip to remove the signs. An additional 1 hour of labor as well as fuel and transportation costs should be added.

- o **Agency Response:** The Agency has changed the “reading the label” activity to “Understand Requirements” as discussed in 4, bullet 3, response to B. The Agency has changed the posting burden to 1 hour for posting and removal.

iv. *Are there other costs that should be accounted for that may have been missed?*

A. On page 15, the EPA is not correct to assume fumigation occurs once every two years.

- o **Agency Response:** The Agency’s assumption is per fumigated field.

On page 15, the EPA needs to define what they are determining as a fumigant application because it appears that this document is assuming that a single fumigant application equals a single FMP. I think the EPA is underestimating the number of subsequent FMPs being developed. I may have 3 or more FMP for any day of fumigation.

- o **Agency Response:** The Agency would like to clarify that it intends for one FMP to be developed for each application. There could be multiple applications being conducted during one day.

Page 15, there are far more handlers per certified applicator than 3:1. In my program, I have a 12:2 ratio and it is likely a larger ratio with growers.

- o **Agency Response:** The Agency notes that 3:1 was taken as an average, but it will depend on the fumigant used and application method. For example, metam shank applications may be made by the one certified applicator on site.

I really cannot comment on registrant burden and costs but you are not calculating in the time that Extension will be required to respond to the newly required community outreach program. The time to address community concerns such as educational circular/bulletin will likely be significant if this process is not handled very carefully.

- o **Agency Response:** The community outreach program targets specific emergency responders and poison control and should not place any additional burden on extension agents.

Cannot respond to state burden but again the assumption of one fumigant application every two years is not accurate.

- o **Agency Response:** The Agency’s assumption is per fumigated field.

B. See bullets points above.

- C. I cannot think of any other items beyond what is mentioned in the ICR.
- D. There are expenses associated with on line training that were not “capital” but include outside cost to develop the on-line training program (ex: annual maintenance cost for the on-line service).
 - o **Agency Response:** The Agency has modified Table 10 to include 10 technical hours for maintenance and distribution.
- E. Registrant burden includes activities not directly covered.
 - Registrants provide training outside of the “Achieva” training and also are involved in other sponsored training programs by the States. A company representative attended 9 such seminars in Washington, Oregon and Idaho. These seminars are well attended and 3-4 hours in length. The purpose for the company representatives being present are to be available to handle questions that other trainers may not be able to answer. Travel costs to attend these seminars also need to be considered.
 - o **Agency Response:** Additional training registrants provide voluntarily (i.e. any fumigant training other than the certified applicator training) is not required by the fumigant REDs, and are therefore outside of the scope of this ICR.
 - It is planned that registrant personnel will review all training materials on an annual basis to assure that any additions or changes are included in the training materials for the coming season. It is estimated that this review will require 15-20 hours to develop.
 - o **Agency Response:** The Agency has modified Table 10 to include 10 technical hours for maintenance and distribution. This is in addition to the 12 clerical hours already listed in the table.