Revisions to EPA’s Agricultural Worker Protection Standard Rule

UF/IFAS and FDACCS Training
January 13 & 15, 2016
Richard Pont, EPA/OPP
Outline

• Background

• Overview of WPS Revisions

• Outreach and Implementation Plan

• Questions/Discussion
Background: WPS Goals & Framework

- **Inform** workers and handlers about potential exposure to pesticides
- **Protect** workers, handlers and other people from exposure to pesticide
- **Mitigate** any pesticide exposures that workers or handlers receive
WPS Framework

- Inform
  - Training
  - Pesticide safety information
  - Notification
  - Information exchange
WPS Framework

- Protect
  - Restricted entry intervals (REIs)
  - Personal protective equipment (PPE)
  - Application exclusion zones (AEZs)
  - Suspend applications
WPS Framework

• Mitigate
  – Routine decontamination supplies
  – Emergency eyewash
  – Emergency assistance
Background: Who is Covered by WPS?

Who is responsible for providing the protections?
- Agricultural employers on crop-producing establishments
- Commercial pesticide handling establishment employers

Who is protected?
- Farmworkers – work in the fields to harvest and cultivate
- Pesticide handlers – mix, load, and apply pesticides for use on crops
- Other persons during pesticide applications
Background: Scope and Applicability

• Keys to WPS applicability:
  – Use of a WPS-labeled pesticide product on an “agricultural establishment” directly related to the production of an “agricultural plant”
  – Employment of workers or handlers
  – Definitions of “agricultural establishment,” “agricultural plant,” and “employ” are important definitions to establishing the scope of rule
Background: Scope and Applicability

• The Agricultural Worker Protection Standard (WPS) was established to improve occupational protections for agricultural workers and pesticide handlers.

• Scope: Who is covered?
  – Approximately 890,000 agricultural establishments (farms, forests, nurseries, greenhouses) – the rule exempts over 520,000 of these from most of the WPS provisions under the exemption for farm owners and immediate family members.
  – Approximately 45,000 commercial pesticide handling establishments (CPHEs). 1,936 CPHEs employ 14,120 handlers, the remaining CPHEs are self-employed handlers.

• No change in scope of rule with revisions
  – No significant changes to excepted uses (i.e., livestock-related uses, post-harvest uses, lawn and ornamental uses, etc.)
Background: Scope and Applicability

• Key Provision

This regulation applies whenever a pesticide product bearing a label requiring compliance with this part is used in the production of agricultural plants on an agricultural establishment, except as provided in paragraphs (b) and (c) of this section.
WPS Exceptions to Applicability

• The WPS does not apply on agricultural establishments when pesticides are used as follows:
  – As part of government-sponsored public pest control programs over which the owner, agricultural employer and handler employer have no control (e.g., mosquito abatement and Mediterranean fruit fly eradication programs)
  – On plants other than agricultural plants, which may include plants in home fruit and vegetable gardens and home greenhouses, and permanent plantings for ornamental purposes, such as plants that are in ornamental gardens, parks, public or private landscaping, lawns or other grounds that are intended only for aesthetic purposes
  – For control of vertebrate pests, unless directly related to the production of an agricultural plant
WPS Exceptions to Applicability

• The WPS does not apply on agricultural establishments when pesticides are used as follows:
  – As attractants or repellents in traps
  – On the harvested portions of agricultural plants or on harvested timber
  – For research uses of unregistered pesticides
  – On pasture and rangeland where the forage will not be harvested for hay
  – In a manner not directly related to the production of agricultural plants, including, but not limited to livestock pest control, structural pest control and control of vegetation in non-crop areas
WPS Exceptions to Applicability

Key Provision:

Where a pesticide’s labeling-specific directions for use or other labeling requirements are inconsistent with requirements of the WPS, users must comply with the pesticide product labeling, except as provided for in exemptions and exceptions listed in sections 170.601, 170.603 and 170.607 of the WPS.
Background: Relationship Between Pesticide Labeling & WPS

WPS requirements incorporated onto labeling by WPS reference statement contained in the “Agricultural Use Requirements” box
Background: Relationship Between Pesticide Labeling & WPS

- The labeling has product-specific requirements to protect workers and handlers
- WPS has instructions on how to implement the requirements
- WPS also has general protections too lengthy to place on every label, e.g., requirements for pesticide safety training, hazard communication materials, decontamination, and emergency assistance

<table>
<thead>
<tr>
<th>Pesticide Labeling</th>
<th>WPS</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Length of the restricted entry interval (REI)</td>
<td>- How to notify workers about the REI (oral or field posting)</td>
</tr>
<tr>
<td>- What PPE must be worn</td>
<td>- Providing, maintaining, and ensuring proper fit of PPE</td>
</tr>
</tbody>
</table>

EPA/OSHA Relationship


- OSHA also establishes industry, chemical, and process-specific standards to address workplace hazards that warrant additional regulatory measures to ensure employees’ occupational safety and health.
EPA/OSHA Relationship

• OSHA’s HCS covers all industries in which an employee may be exposed to a chemical hazard in the workplace - except as limited by section 4(b)(1) of the Occupational Safety and Health Act, which prohibits OSHA from regulating working conditions or hazards where other federal agencies exercise statutory authority to prescribe or to enforce standards for occupational safety and health.
EPA and OSHA Roles

• EPA has stated the intended reach of the WPS is limited to occupational safety for pesticides and OSHA is not preempted from regulating any non-pesticide chemical or other workplace hazards in agriculture.

• OSHA established a policy not to cite employers covered under the WPS for pesticide-related HCS standards. The policy defers to EPA’s regulatory authorities for protection of handlers and workers on establishments covered by the WPS, as well as pesticide labeling and use and certification of pesticide applicators.

• EPA and OSHA agreed OSHA’s Field Sanitation Standard addresses general sanitary standards, while EPA’s WPS decontamination requirements are specific to pesticide hazards so no preemption issues exists.
WPS Revisions
WPS Revisions

• **KEY POINT:** There are no changes to WPS pesticide labeling requirements
  – No label changes needed to implement new WPS revisions
  – No change in scope of products covered by the rule – only agricultural use pesticides (for crop uses) covered
  – Current WPS labeling requirements remain the same
WPS Revisions

• KEY POINT: EPA delayed compliance dates to give farmers and States time to become familiar with new requirements and prepare for implementation
  – Compliance with most new requirements not required until January 2, 2017
  – Compliance with certain WPS requirements delayed until January 1, 2018
## Implementation Timeline

<table>
<thead>
<tr>
<th>Date</th>
<th>Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 28, 2015</td>
<td>Revised WPS final rule signed and announced.</td>
</tr>
<tr>
<td>November 2, 2015</td>
<td>Revised WPS final rule published in the <em>Federal Register</em>.</td>
</tr>
<tr>
<td>January 1, 2016</td>
<td>Revised WPS final rule becomes effective. [Compliance is required with <em>existing</em> WPS during 2016.]</td>
</tr>
<tr>
<td>January 2, 2017</td>
<td>Compliance is required with <em>most</em> of the <em>revised</em> WPS requirements.</td>
</tr>
<tr>
<td>January 1, 2018</td>
<td>Compliance is required with <em>all</em> of the <em>revised</em> WPS requirements. Last three requirements:</td>
</tr>
<tr>
<td></td>
<td>• Cover new content in worker and handler training</td>
</tr>
<tr>
<td></td>
<td>• Include new content on pesticide safety information display</td>
</tr>
<tr>
<td></td>
<td>• Handlers suspend applications if anyone is in the application exclusion zone.</td>
</tr>
</tbody>
</table>
Changes to WPS Rule Structure
(40 CFR 170)
Current WPS Rule Structure

• Subpart A – General Provisions
  – 170.1 Scope and purpose.
  – 170.3 Definitions.
  – 170.5 Effective date and compliance dates.
  – 170.7 General duties and prohibited actions.
  – 170.9 Violations of this part.
Current WPS Rule Structure

• Subpart B -- Standard for Workers
  – 170.102 Applicability of this subpart.
  – 170.103 Exceptions.
  – 170.104 Exemptions.
  – 170.110 Restrictions associated with pesticide applications.
  – 170.112 Entry restrictions.
  – 170.120 Notice of applications.
  – 170.122 Providing specific information about applications.
  – 170.124 Notice of applications to handler employers.
  – 170.130 Pesticide safety training for workers.
  – 170.135 Posted pesticide safety information.
  – 170.150 Decontamination.
  – 170.160 Emergency assistance.
Current WPS Rule Structure

- **Subpart C -- Standard for Pesticide Handlers**
  - 170.202 Applicability of this subpart.
  - 170.203 Exceptions.
  - 170.204 Exemptions.
  - 170.210 Restrictions during applications.
  - 170.222 Providing specific information about applications.
  - 170.224 Notice of applications to agricultural employers.
  - 170.230 Pesticide safety training for handlers.
  - 170.232 Knowledge of labeling and site-specific information.
  - 170.234 Safe operation of equipment.
  - 170.235 Posted pesticide safety information.
  - 170.240 Personal protective equipment.
  - 170.250 Decontamination.
  - 170.260 Emergency assistance.
Revised WPS Rule Structure

• Subpart D – General Provisions
  – 170.301 Scope and purpose
  – 170.303 Applicability of this part
  – 170.305 Definitions
  – 170.309 Agricultural employer duties
  – 170.311 Display requirements for pesticide safety information and pesticide application and hazard information
  – 170.313 Commercial pesticide handler employer duties
  – 170.315 Prohibited actions
  – 170.317 Violations of this part
Revised WPS Rule Structure

• Subpart E – Requirements for Protection of Agricultural Workers
  – 170.401 Training requirements for workers
  – 170.403 Establishment-specific information for workers
  – 170.405 Entry restrictions associated with pesticide applications
  – 170.407 Worker entry restrictions after pesticide applications
  – 170.409 Oral and posted notification of worker entry restrictions
  – 170.411 Decontamination supplies for workers
Revised WPS Rule Structure

- Subpart F – Requirements for Protection of Agricultural Pesticide Handlers
  - 170.501 Training requirements for handlers
  - 170.503 Knowledge of labeling, application-specific, and establishment-specific information for handlers
  - 170.505 Requirements during applications to protect handlers, workers, and other persons
  - 170.507 Personal protective equipment
  - 170.509 Decontamination and eye flushing supplies for handlers
Revised WPS Rule Structure

• Subpart G – Exemptions, Exceptions and Equivalency
  - 170.601 Exemptions
  - 170.603 Exceptions for entry by workers during restricted-entry intervals
  - 170.605 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval
  - 170.607 Exceptions to personal protective equipment requirements specified on pesticide product labeling
  - 170.609 Equivalency requests
Definitions

• Added definitions to rule for the following terms:
  – Application exclusion zone, closed system, commercial pesticide handler employer, designated representative, employ, enclosed cab, enclosed space production, labor contractor, outdoor production, personal protective equipment, safety data sheet, use and worker housing area

• Revised the following key definitions:
  – Agricultural establishment, agricultural plant, handler, immediate family and worker

• Deleted the following definitions:
  – Commercial production (proposed), entry-restricted area (proposed), farm, forest, forest operation (proposed), greenhouse and nursery
Definitions

• Agricultural establishment

- *Agricultural establishment* means any farm, forest operation, or nursery engaged in the outdoor or enclosed space production of agricultural plants. An establishment that is not primarily agricultural is an agricultural establishment if it produces agricultural plants for transplant or use (in part or their entirety) in another location instead of purchasing the agricultural plants.
Definitions

• Agricultural plant

  – *Agricultural plant* means any plant, or part thereof, grown, maintained, or otherwise produced for commercial purposes, including growing, maintaining or otherwise producing plants for sale or trade, for research or experimental purposes, or for use in part or their entirety in another location. Agricultural plant includes, but is not limited to, grains, fruits and vegetables; wood fiber or timber products; flowering and foliage plants and trees; seedlings and transplants; and turf grass produced for sod. Agricultural plant does not include pasture or rangeland used for grazing.
Definitions (170.305)

• Designated representative

  - *Designated representative* means any persons designated in writing by a worker or handler to exercise a right of access on behalf of the worker or handler to request and obtain a copy of the pesticide application and hazard information required by §170.309(h) in accordance with §170.311(b) of this part.
Definitions (170.305)

• Employ

  - *Employ* means to obtain, directly or through a labor contractor, the services of a person in exchange for a salary or wages, including piece-rate wages, without regard to who may pay or who may receive the salary or wages. It includes obtaining the services of a self-employed person, an independent contractor, or a person compensated by a third party, except that it does not include an agricultural employer obtaining the services of a handler through a commercial pesticide handler employer or a commercial pesticide handling establishment.
Definitions (170.305)

• Enclosed space production

  – *Enclosed space production* means production of an agricultural plant indoors or in a structure or space that is covered in whole or in part by any nonporous covering and that is large enough to permit a person to enter.
Definitions (170.305)

• Outdoor production
  
  – *Outdoor production* means production of an agricultural plant in an outside area that is not enclosed or covered in any way that would obstruct the natural air flow.
Definitions (170.305)

• Immediate family

  – *Immediate family* is limited to the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. “First cousin” means the child of a parent’s sibling, i.e., the child of an aunt or uncle.
Training Requirements

- Training requirements for workers (170.401) and handlers (170.501)
  - Key changes:
    - Training/Retraining Interval
    - Grace Period for Workers
    - Trainer Qualifications
    - Verification for Workers and Handlers
    - Acceptable Content and Methods
Training Interval and Grace Period

• Key Changes
  – Annual training for workers and handlers
  – No grace period

• Implementation timing
  – January 2017 all new training requirements will be fully enforceable – EXCEPT new content
  – January 2018 new content required
Trainer Qualifications

• Trainers of workers or handlers must either:
  – be certified as an applicator of RUPs, or
  – have completed an EPA-approved pesticide safety train-the-trainer program for handlers or workers, or
  – be designated as a qualified trainer by EPA or the agency responsible for pesticide enforcement

• Certified applicator or handler designation also qualifies them to train workers
• If only training workers, trainer only needs worker designation
Trainer Qualifications

Key changes

- Handlers are **no longer qualified** to provide training to workers
- Train-the-trainer courses must be **EPA-approved**
- Completion of any EPA approved TTT course qualifies a person to train in **any jurisdiction**, unless explicitly prohibited
Verification of Training

• Key changes:
  – Employers must keep training records for 2 years
  – Record must include:
    • handler/workers printed name and signature
    • date of the training
    • what EPA-approved training materials were used
    • name and qualifications of trainer
    • employer’s name
  – Must provide a copy of records to inspectors or workers/handlers upon request
  – Voluntary training verification card system removed
Content of Training

• Kept existing content and expanded
  – Worker training has 23 items
  – Handler training has 36 items
  – Training on new content required 2 years from date of final rule → January 2018
Content of Worker Training

• Key additions
  – How to report suspected violations to lead agency
  – More detail on existing topics, such as decontamination
  – More detail on hazards from pesticide residue on clothing and how to avoid exposure
  – Potential hazards to children and pregnant women from pesticide exposure
  – Meaning of the Safety Data Sheets
  – Specific information about other new WPS protections for workers like protections from retaliation
Content of Handler Training

• Key additions
  – **All content** in worker training, plus:
  – Handlers must be at least **18 years old**
  – How to recognize, prevent, and provide **first aid for heat-related illness**
  – Handlers should receive **respirator fit-testing, training and a medical evaluation** if they are required to wear a respirator by the product labeling
  – Handlers must **suspend a pesticide application** if anyone is in the **application exclusion zone**
  – Specific information about **other new WPS protections for handlers**
Training Methods

• Key additions
  ▪ Location must be *reasonably free from distraction* and conducive to training
  ▪ Qualified **trainer must be present** during the entire training program
  ▪ Training materials must be **EPA-approved**
  ▪ All new training requirements will be fully enforceable **January 2017** – EXCEPT new content
Posted Notification

• Key changes to posting requirements
  – For **enclosed-space**, posting warning signs is **only** required when the REI is greater than 4 hours
  – For **outdoor production**, MUST post warning signs when the REI is greater than 48 hours
  – Post on the border of any **worker housing within 100 feet** of the treated area
  – Must post **prior to but no earlier than 24 hours** before application (not a change)
  – Signs must be **removed or covered within three days** of the end of the application or REI, unless workers are kept out
Oral Notification

• Minor addition to oral notification
  • Must be provided in a manner the worker can understand.
  • Must be provide before the application or at the beginning of the first work period.
  • Must include:
    – Location and description of treated area
    – Time during which entry is restricted
    – Instructions not to enter treated area
    – Instructions not to enter application exclusion zone
No change in the content or size of the warning sign
Keep and Display Pesticide Application and Hazard Information

• Key changes from existing rule
  – New – display SDS at central display location
  – New – keep records (pesticide application & hazard info (SDS)) for 2 years from REI end date
  – New - upon request give access/copies to workers, handlers, treating medical personnel and “designated representatives”
  – Changed - timing to display pesticide application and hazard info at central location
Pesticide Application and Hazard Info

• Content

(i) Copy of SDS.
(ii) Name, EPA registration #, and a.i. pesticide product.
(iii) Crop or site treated, & location and description of treated area.
(iv) Date(s), times application started and ended.
(v) Duration of REI.
Pesticide Application and Hazard Info

• Location, accessibility and legibility

**Location.** Display where workers/handlers are likely to pass by or congregate and can be readily seen and read.

**Accessibility.** When information is required to be displayed, give workers/handlers access to location of information at all times during normal work hours.

**Legibility.** Must be legible at all times while on display.
Pesticide Application and Hazard Info

• Record retention

Employers must keep application info and SDS for 2 years from REI expiration date
Pesticide Application and Hazard Info

- Timing

Display no later than 24 hours after end of application, and for at least 30 days from end of REI, or until workers/handlers are no longer on establishment, whichever is earlier.
Key Related Provision

• Agricultural employer duties

Ensure workers do not enter areas where pesticides were applied until application info & SDS are displayed, and until REI has expired and warning signs have been removed or covered, except for early entry permitted by rule.
Access to Records

• Access to pesticide application & hazard info by a worker or handler
  – If person requests a copy or access to information after it was displayed, and is/was employed as a worker or handler while it was displayed or kept as a record, agricultural employer must give a copy or access within 15 days of oral or written request.
  – Whenever same record was previously provided without cost, agricultural employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copying expenses but not including overhead expenses) for additional copies.
Access to Records

• Access to pesticide application & hazard info by treating medical personnel
  – Any treating medical personnel, or person under supervision, may orally or in writing request access to/or copy of information in records to inform diagnosis or treatment of a worker/handler employed on establishment during period information was required to be displayed
  – Agricultural employer must promptly provide copy of or access to all of requested information
Access to Records

- Access to pesticide application & hazard information by a designated representative

  - Any worker’s/handler’s designated representative may submit a written request access to/or copy of information on behalf of a worker/handler employed during time information was required to be displayed. Agricultural employers must give access or/copy within 15 days of receipt of (written) request
Access to Records

• Access to pesticide application & hazard info by a designated representative

(ii) Written request must have:
   (A) Name of worker or handler being represented.

   (B) Specific application information and/or SDS requested, worker/handler dates of employment, date(s) of records requested, type of work (e.g., planting, harvesting, applying pesticides, mixing or loading pesticides) during that period.

   (C) Statement clearly designating person as representative to request information on behalf of worker/handler, printed name & signature of worker/handler, date of designation, printed name & contact information for designated representative.

   (D) If worker or handler requests information be sent, directions for sending (e.g., mailing address or email address).
Access to Records

- Access to pesticide application and hazard info by a designated representative

  - If a written request contains all required info, the employer must give copy or access to requested information within 15 days of receipt of request.
  - When a record has been previously provided without cost to a worker, handler or designated representative, agricultural employer may charge designated representative a reasonable, non-discriminatory administrative cost (i.e., search and copying expenses but not including overhead expenses) for more copies.
Information Exchange

Both agricultural employers and commercial pesticide handler employers are responsible for relaying information about pesticide applications to each other – and in turn to their own handler employees.
Info Exchange: Agricultural Employer

• **No change** -- Ag employer must ensure that if handlers employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler employer is provided information about, or is aware of:

  1. the specific location and description of any treated areas on the ag establishment where an REI is in effect **that the handler may be in (or may walk within ¼ mile of),** and

  2. any restrictions on entering those areas
Info Exchange: Commercial Pesticide Handler Employer

• Current: **Before** the application of any pesticide on or in an ag establishment, the handler employer shall provide the following information to any ag employer:
  • the specific location and description of any treated areas where an REI is in effect that the handler may be in (or may walk within ¼ mile of)
  • any restrictions on entering those areas
  • Product name, EPA reg number, and a.i.
  • REI
  • Whether posting and oral notification are required
  • Any other labeling concerns
Information Exchange: Commercial Pesticide Handler Employer

• Key changes
  – Before the application of any pesticide on an ag establishment, provide ag employer required application info including the start and estimated end times of the application
  – Provide updated information prior to the application for certain changes
  – Provide changes to estimated end time and product name within two hours of completing the application
  – Changes to the estimated application end time of less than one hour need not be reported
Pesticide Safety Information

Current WPS

• Safety poster displayed at central location
• Certain safety information specified

Revised WPS

• Safety information displayed at central location and certain decontamination sites
• Additional information required on display

[Delayed implementation requirement]

– Seek medical attention as soon as possible if you believe you have been poisoned, injured or made ill by pesticides
– Name, address & phone of state/tribal pesticide regulatory agency
Minimum Age Requirements

• The final rule establishes a minimum age of 18 for handlers and early entry workers
Protections During Applications for Outdoor and Enclosed Space Production
Current Rule: Entry Restricted Areas (ERAs)

- Treated area + 100 foot ERA
  - Applied aerially, in an upward direction or using spray pressure > 150 psi
  - Applied as a fumigant, smoke, mist, fog or aerosol
- Treated area + 25 foot ERA
  - Applied downward using height > 12 inches from the planting medium or a fine spray or a spray pressure > 40 psi and < 150 psi
- Treated area + 0 foot ERA
  - Applied otherwise
Revised Rule: Application Exclusion Zones (AEZs)

- Establishes application exclusion zones (AEZs) based on distance from the application equipment for farms, forests and nurseries
AEZs in Outdoor Production

• 100 foot AEZ
  – Applied aerially, by air blast or with a spray quality smaller than medium (volume median diameter < 294 microns)
  – Applied as a fumigant, smoke, mist or fog

• 25 foot AEZ
  – Applied other than above & sprayed from a height of >12 inches from planting medium with spray quality of medium or larger

• No AEZ
  – Applied otherwise
## Color Codes for Droplet Size

<table>
<thead>
<tr>
<th>Category</th>
<th>Symbol</th>
<th>Color Code</th>
<th>Approximate VMD Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Fine</td>
<td>VF</td>
<td>Red</td>
<td>&lt; 150</td>
</tr>
<tr>
<td>Fine</td>
<td>F</td>
<td>Orange</td>
<td>150 – 250</td>
</tr>
<tr>
<td>Medium</td>
<td>M</td>
<td>Yellow</td>
<td>250 – 350</td>
</tr>
<tr>
<td>Coarse</td>
<td>C</td>
<td>Blue</td>
<td>350 – 450</td>
</tr>
<tr>
<td>Very Coarse</td>
<td>VC</td>
<td>Green</td>
<td>450 – 550</td>
</tr>
<tr>
<td>Extremely Coarse</td>
<td>XC</td>
<td>White</td>
<td>&gt; 550</td>
</tr>
</tbody>
</table>

*NC Cooperative Extension*
Application Exclusion Zones in Outdoor Production

Existing (nurseries) & proposal: Entry-restricted area is in purple

Final: Application exclusion zone is in purple
Outdoor Production: **Revised** Protections During Applications – Ag Employers

- During an application, an agricultural employer must keep workers and other persons out of the treated area and the AEZ that is **WITHIN the boundary** of the establishment owner’s property
Outdoor Production: **Revised** Protections During Applications - Handlers

- Handler must immediately suspend application if worker or other person (other than handler) is in AEZ:
  - **Not limited to boundaries of ag establishment**
  - Handlers must temporarily suspend application, and cannot proceed unless he/she can ensure persons in the AEZ off the establishment will not be contacted by the pesticide
  - One of the three requirements with a delayed compliance date (Jan 1, 2018) to allow for handlers to be trained on new content
Enclosed Space Production: **Revised**
Protections During Applications

- **Same**: Label statement prohibition on drift
- **Similar**: Handler employer & handler ensure application does not contact worker or other person
- **Similar**: Ag employer must keep workers & other persons out of certain areas identified in table (170.405(b))
- **New**: Handler must suspend application if worker or other person is in AEZ
A. When a pesticide is applied:

<table>
<thead>
<tr>
<th>B. Workers and other persons, other than appropriately trained and equipped handlers, are prohibited in:</th>
<th>C. Until:</th>
<th>D. After the expiration of time specified in column C, the area subject to the restricted-entry interval is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) As a fumigant.</td>
<td>Entire enclosed space plus any adjacent structure or area that cannot be sealed off from the treated area.</td>
<td>The ventilation criteria of paragraph (b)(3) of this section are met.</td>
</tr>
<tr>
<td>(2) As a (i) Smoke, or (ii) Mist, or (iii) Fog, or (iv) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns).</td>
<td>Entire enclosed space.</td>
<td>The ventilation criteria of paragraph (b)(3) of this section are met.</td>
</tr>
<tr>
<td>(3) Not as in (1) or (2), and for which a respiratory protection device is required for application by the pesticide product labeling.</td>
<td>Entire enclosed space.</td>
<td>The ventilation criteria of paragraph (b)(3) of this section are met.</td>
</tr>
<tr>
<td>(4) Not as in (1), (2) or (3), and: (i) From a height of greater than 12 inches from the planting medium, or (ii) As a spray using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater).</td>
<td>Treated area plus 25 feet in all directions of the treated area, but not outside the enclosed space.</td>
<td>Application is complete.</td>
</tr>
<tr>
<td>(5) Otherwise.</td>
<td>Treated area.</td>
<td>Application is complete.</td>
</tr>
</tbody>
</table>
Enclosed Space Production: **Revised**

Protections During Applications

Table: Entry Restrictions During Enclosed Space Production Pesticide Applications

- Column B: expanded to align with reg text - includes other persons (other than … handlers) and workers
- Fumigant (1): Description of space in column B and conditions in column D changed to be consistent with other changes to revised reg text
- Description of applications in (2) and (4) adjusted to be consistent with AEZ
WPS PPE Requirements
WPS PPE Requirements

• Key Provision:

Handler responsibilities. Any person who performs handler activities involving a pesticide product must use the clothing and personal protective equipment specified on the pesticide product labeling for use of the product, except as provided in § 170.607 of this part.
WPS PPE Requirements

• Key Provision:

Employer responsibilities for providing personal protective equipment. The handler employer must provide to the handler the personal protective equipment required by the pesticide product labeling in accordance with this section. The handler employer must ensure that the personal protective equipment is clean and in proper operating condition. For the purposes of this section, long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks are not considered personal protective equipment, although such work clothing must be worn if required by the pesticide product labeling.
If the label-required handler PPE is less restrictive than the label-required PPE for early entry (e.g., the pesticide label requires a handler to wear a long-sleeved shirt and long pants, but the label-required PPE for early entry requires coveralls over long-sleeved shirt and long pants), then the employer can allow early entry workers to substitute the less restrictive PPE.

A. True
B. False
General PPE Requirements

- No significant changes to general PPE requirements or the PPE descriptions in existing WPS
- Existing WPS provisions for employer responsibilities for providing, maintaining, caring for and cleaning PPE are the same
- Minor change in employer responsibilities for persons who clean or repair PPE
Chemical Resistant PPE Requirements

- WPS currently defines “chemical resistant” PPE as PPE made of a material that allows no measurable movement of the pesticide through the material during use
- EPA proposed to define “chemical resistant” PPE as PPE defined by its manufacturer as chemical resistant
- In the final rule the existing definition for “chemical resistant” PPE is unchanged
- EPA plans to initiate an internal review process to address issues related to concerns with labeling requirements for chemical resistant PPE
Contaminated PPE Requirements

- Existing WPS requires employers to ensure PPE is cleaned before each day of reuse. If the article cannot be properly cleaned, the employer must dispose of it in accordance with applicable Federal, State, and local regulations.
- In final rule, the employer must ensure that contaminated PPE is made unusable as apparel or disposed of in such a way that it is unavailable for further use.
- EPA also included a requirement for the person who cleans, disposes, or otherwise handles the contaminated PPE to wear the gloves required for mixing and loading the pesticide that is the contaminant.
Respirator Requirements

• When a respirator is required by the labeling, handler employer must provide handlers with the following before the handler performs any activity requiring the respirator:
  – Medical evaluation
  – Fit test
  – Respirator training

• Handler employer must maintain records for 2 years documenting completion of these
Medical Evaluation

• Must provide handlers with a medical evaluation … that conforms to 29 CFR 1910.134. (Paragraph (e))
  – Must provide = employer must pay for it

• To ensure the handler’s physical ability to safely wear the respirator

• Medical evaluation to wear a respirator is different than medical monitoring!
Medical Evaluation: Basic Information

• When: Before the employee is fit tested and uses the respirator for the first time
• Required for all types of respirators (if respirator use is required)
• Employer must identify a physician or another licensed health care professional (PLHCP)
  – PLHCPs in area: see if respirator medical evaluation is within scope of their license
  – Check with state licensing board
  – Online services (respirator medical evaluation online service)
Medical Evaluation: Questionnaire

- Medical questionnaire in OSHA standard; can use that or an exam that obtains same info.
- Must be administered confidentially during employee’s normal working hours (or convenient time/place) and in a manner employee understands.
- Employer cannot review employee’s responses; questionnaire provided directly to physician or licensed health care professional.
Medical Recommendation from PLHCP

• PLHCP must provide only this info to employer in writing:
  – Determination of whether or not the employee is medically able to use a respirator
  – Any limitations on respirator use related to the medical conditions of the employee or the workplace conditions
  – Need, if any, for follow-up medical evaluations
  – Statement that PLCHP provided employee with written recommendation

• This recommendation is the record - 2 years
Fit Test

- Must provide handlers with fit testing using the respirator specified on the labeling in a manner… that conforms to 29 CFR 1910.134. (Paragraph (f))
- To ensure the respirator forms an adequate seal on the user’s face; if seal is not good, the respirator won’t provide intended protection
When is a Fit Test Required?

• Before initial use
• At least annually after that
• If handler changes to a different respirator
• If change in handler’s physical condition that could affect the seal:
  – Obvious change in body weight, facial scarring, extensive dental work, cosmetic surgery
When is a Fit Test Required?

• Which respirators? Any respirator with a tight-fitting facepiece
  – Form a complete seal with wearer’s face
  – Includes negative pressure (air-purifying) and positive pressure (air-supplying) respirators
• If different products require different respirators, must fit test for each one
• Fit test must be conducted with same make, model, style and size respirator
Tight-Fitting Air-Purifying Respirators

Half mask filtering facepiece respirator

Half mask elastomeric respirator

Full facepiece elastomeric respirator

OSHA Small Entity Compliance Guide, 2011
Loose-Fitting Air-Purifying Respirators

Loose-fitting Powered Air-Purifying Respirator (PAPR)

Hooded Powered Air-Purifying Respirator (PAPR)
Fit Test Procedures

• A user seal check is NOT a fit test

• Procedures described in 29 CFR 1910.134, Appendix A

• Quantitative fit test
  – Measure leakage into the respirator

• Qualitative fit test
  – Pass/fail; relies on wearer’s response to a substance (e.g., banana oil) introduced to a enclosure
  – Example fit test (3M, 2012):
    https://www.youtube.com/watch?v=XILjMeLEJEw
Fit Test Procedures

• Who can conduct qualitative test?
  – The employer must ensure that the person administering qualitative fit testing is able to prepare test solutions, calibrate equipment, perform test properly, recognize invalid tests and ensure test equipment is in proper working order

• Can purchase fit test kits
Fit Test Records

• Fit test records (qualitative or quantitative):
  – Name of handler tested
  – Type of fit test performed
  – Make, model and size of the respirator tested
  – Date of the fit test
  – Results of the fit test – pass/fail for qualitative

• Keep for 2 years
Respirator Training

• Employer must provide handler with training in the use of the labeling-required respirator in a manner that conforms to the provisions of 29 CFR 1910.134(k)(1)(i)-(vi)

• Ensure the handler knows how to use the respirator properly
Respirator Training Basic Information

• When?
  – Before the handler uses the respirator in the workplace and if knowledge/skill not retained by handler

• How?
  – In a manner that is understandable to the handler
  – No specific format
  – Employer must ensure that handler can demonstrate knowledge of the required points
Respirator Training Content

1. Why the respirator is necessary and how improper fit, usage and maintenance can make the respirator ineffective
2. The limitations and capabilities of the respirator
3. How to select cartridges and canisters and know the schedule for changing them out
4. How to use the respirator effectively in emergency situations
5. How to inspect, put on and remove, use and check the seals of the respirator
6. Respirator maintenance and storage procedures
7. How to recognize medical signs and symptoms that may limit or prevent effective use of the respirator
Decontamination Supplies

Current WPS
• Employers must provide “sufficient amount of water so that the workers/handlers may wash thoroughly”

Revised WPS
• Provide 1 gallon of water for each worker and 3 gallons for each handler and each early entry workers measured at the beginning of the work period
Decontamination Supplies

Current WPS

• If handler is using a product that requires eye protection, one pint of water must be immediately available to each handler

Revised WPS

• If handler is using a product that requires eye protection or using closed system under pressure, a system for delivering eyeflush water must be immediately available at each mix/load site for handler eye flushing

• If applicator is using a product that requires eye protection, one pint of water must be immediately available to each applicator
Emergency Assistance

Current WPS

• Employers must provide “prompt” transportation to an emergency medical facility for workers or handlers who may have been exposed to pesticides
• Upon request, employers must provide certain information, if available, to the exposed person or medical personnel

Revised WPS

• Retain “prompt” for provision of transportation
• Require employers to provide for each product the SDS and specific information about the product, as well as the circumstances of the application and exposure, to treating medical personnel
Exemptions

• Owner and immediate family exemption
  – Key changes:
    • Establishments covered
      – Majority ownership versus wholly owned
      – More establishments qualify due to expanded “immediate family” definition
    • Immediate family members covered
      – More establishments qualify due to expanded “immediate family” definition
    • Provisions covered by the exemption
Owner and Immediate Family Exemption

• Key provision – The owners of agricultural establishments must provide all of the applicable protections required by this part for any employees or other persons on the establishment that are not members of their immediate family.
Owner and Immediate Family Exemption

Key points about exemption:

- There is no exemption for “family farms”
- The “agricultural establishment” is NOT exempt
- Exemption only covers the owner and immediate family members
- Owners and immediate family must still comply with some WPS provisions and all labeling requirements
Owner and Immediate Family Exemption

• Owners and immediate family must still comply with the following WPS requirements:
  – When respirators are required on the pesticide labeling, following WPS requirements for training, medical evaluation, fit testing, and recordkeeping
  – Providing and using the PPE and other work attire listed on pesticide labeling; but they are eligible for the allowable exceptions to PPE, such as for using a closed system
Owner and Immediate Family Exemption

- Owners and immediate family must still comply with the following WPS requirements:
  - Keeping immediate family members out of the treated area until the restricted-entry interval (REI) expires
  - Ensuring the pesticide is applied so it does not contact anyone, including members of the immediate family (requirement on label and in WPS)
Owner and Immediate Family Exemption

• Owners and immediate family must still comply with the following WPS requirements:
  – Keeping everyone, including members of the immediate family, out of the application exclusion zone during the application
  – Ensuring that any pesticide applied is used in a manner consistent with the product’s labeling
Exemptions

• Certified crop advisor exemption
  – Key changes:
    • Only certified crop advisors themselves are covered by exemption
    • Employees under their direct supervision are no longer covered by the exemption and must wear required PPE when entering treated areas during the REI and be provided decontamination and emergency assistance
Early Entry Exceptions

• Key Changes
  – Eliminated administrative exception provisions
  – Clarified no contact exception condition
  – Revised process for declaration of agricultural emergencies
  – Added a time limit on time allowed for early entry under the agricultural emergency exception for cases where a double notification product is used
  – Codified previously approved administrative exceptions (i.e., limited contact and irrigation exceptions), but removed “unforeseen” stipulation from the requirement for irrigation exception
Protections for Early Entry Workers

• Key changes
  – Added oral notification requirements for early entry workers, but eliminated requirement for recordkeeping of completion of oral notification (changed from proposal)
  – Added a minimum age requirement
WPS Exceptions to Label-Required PPE

- Body protection
- Boots
- Gloves
- Closed systems
- Enclosed cabs
- Aerial applications
- Crop Advisors
Closed Systems

- Final rule requirements for closed systems:
  
  - In the final rule, the handler employer must ensure that written operating instructions for the closed system are available, the handler receives training on use of the closed system, and the system is maintained according to the written instructions.
  
  - The final rule retains the existing requirement that label-required PPE must be immediately available for use in an emergency, and handlers must wear protective eyewear for closed systems that operate under pressure.
Closed Systems

When loading intact, sealed, water soluble packaging into a mixing tank or system. If the integrity of a water soluble packaging is compromised (for example, if the packaging is dissolved, broken, punctured, torn, or in any way allows its contents to escape), it is no longer a closed system and the labeling-specified personal protective equipment must be worn.
Enclosed cabs

• Final rule requirements for enclosed cabs:
  – Handlers in enclosed cabs may substitute a long-sleeved shirt, long pants, shoes and socks for the labeling-specified PPE for skin and eye protection
  – If any type of respirator is required by the pesticide labeling for applicators, other than a particulate filtering respirator (NIOSH approval number prefix TC-84A), the handler must wear the respirator inside the enclosed cab during handling activities
Enclosed cabs

• EPA has retained other existing PPE requirements for handlers using enclosed cabs:
  
  – All of the PPE required by the pesticide product labeling for applicators must be immediately available to handlers in an enclosed cab and be stored in a sealed container to prevent contamination
  
  – Handlers must wear the applicator PPE if they exit the cab within a treated area during application or when a REI is in effect
  
  – Once PPE has been worn in a treated area, handlers must remove it before reentering the cab to prevent contamination of the cab
Aerial applications

Enclosed Cockpits

• Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.
Aerial applications

• Eyewear Protection for Open Cockpits

  – In the final rule, EPA has removed the term “visor” from the allowable types of eyewear. [The existing WPS allows aerial applicators applying pesticides from open cockpit aircraft to substitute a visor for label-required eye protection. Because the term “visor” can be used to refer to the brim of a cap that provides only shade and offers little eye protection from pesticide sprays, EPA proposed to clarify the requirement by removing the term and allow aerial applicators to substitute for the label-required eyewear a helmet with the face shield lowered.]

  – The final rule allows the substitution of a helmet with face shield lowered for labeled protective eyewear for aerial applicators in aircraft with open cockpits
Aerial applications

- Use of Gloves

  - In the final rule EPA retained the exception in the existing WPS that offers aerial applicators the option of wearing chemical-resistant gloves when entering and exiting the aircraft, except when the product labeling requires that chemical-resistant gloves be worn when entering and exiting the aircraft.
PPE Exception for Crop Advisors

- EPA has included in the final rule added flexibility in the PPE requirements for crop advisors and their employees.
- Crop advisors and their employees who perform crop advising tasks during the REI may substitute the label-required handler PPE with either:
  - The label-required PPE for early-entry activities; or
  - A “universal” set of crop advisor PPE that may be worn in any situation (coveralls, shoes plus socks, chemical-resistant gloves made of any waterproof material and eye protection if the labeling of the pesticide product applied requires protective eyewear for handlers).
Implementation Materials: Outreach

- Overview fact sheet, presentation
- Comparison tables
- More details on key topics, e.g., respirator fit test, medical evaluation & training; application exclusion zone; others
  - Presentations, fact sheets, etc.
- How to Comply Manual (or equivalent)
- What other general education materials are needed?
Implementation Materials: Worker and Handler Training

- Update **worker** pesticide safety training materials (manual, video, flip chart, other?)
  - Develop materials for different sectors (greenhouses, nurseries, specialty crops, etc.)
- Update **handler** pesticide safety training materials (manual, video, flip chart, other?)
- Train-the-trainer materials
Implementation Materials: Compliance and Enforcement

• Implementation Guidance (EPA, States and Tribes)
  – Regional NPM guidance, cooperative agreement grant guidance, compliance monitoring strategy
  – Equivalency determinations

• Update WPS Inspection Guidance

• Update WPS Interpretive Q&As

• Inspector Pocket Guidance (or equivalent)
Questions?

- Web site: http://www2.epa.gov/pesticide-worker-safety

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