

CHAPTER 2

REQUIREMENTS FOR AGRICULTURAL EMPLOYERS OF WORKERS OR HANDLERS

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The topics covered in this chapter apply to agricultural employers of workers and handlers. Some WPS protections employers must provide are nearly the same whether their employees are workers or handlers. Additional responsibilities for agricultural employers of workers are covered in Chapter 3. Chapter 4 covers additional responsibilities for employers of handlers. If both workers and handlers are employed, it will be necessary to read Chapters 2, 3 and 4.

All WPS requirements are effective January 2, 2017 unless identified for a delayed implementation of January 2, 2018.



GENERAL RESPONSIBILITIES OF AGRICULTURAL EMPLOYERS

The WPS requires agricultural employers to implement many provisions to protect workers and handlers. The general responsibilities for agricultural employers are listed below with additional requirements presented further in this chapter.

Agricultural employers must:

- Ensure all pesticides are used consistent with the pesticide product label at all times, including following the WPS requirements when applicable. 170.309(a)
- Provide each worker and handler the protections required by the WPS. 170.309(b)
- Verify that each handler, or worker that conducts early-entry tasks, is at least 18 years old. 170.309(c)
- Ensure that employees do not clean, repair, or adjust pesticide application equipment without completing WPS handler training. 170.309(g)
- Do not allow other persons (not employed by the agricultural establishment) to clean, repair, or adjust pesticide application equipment until they are told:
 - That the equipment may be contaminated with pesticides.
 - The potentially harmful effects of pesticide exposure.
 - How they are to handle the equipment to limit exposure to pesticides.
 - How to wash themselves and/or their clothes to prevent or remove pesticide residues. 170.309(g)
- Provide records or other information required by the WPS for inspection to an employee of EPA or any duly authorized representative of a Federal, State or Tribal agency responsible for pesticide enforcement. 170.309(m)

The minimum age of 18 years old applies to all handlers and early-entry workers at agricultural establishments including research facilities, universities, or governmental entities. The only exemption from the minimum age is for owners of agricultural establishments and their immediate family.

RESPONSIBILITIES OF AGRICULTURAL EMPLOYERS TO PROVIDE INSTRUCTIONS TO SUPERVISORS 170.309(d) & (e)

If an agricultural employer employs supervisors of workers or handlers, or hires workers or handlers through a labor contractor, the agricultural employer must provide sufficient instructions to the supervisors and/or labor contractors to ensure that workers and handlers receive all required WPS protections. The instructions must specify which tasks the labor contractors and/or supervisors are responsible for in order to comply with the WPS.

The agricultural employer must also require labor contractors and anyone who supervises any workers or handlers to provide sufficient information and directions to each worker and handler to ensure that they can comply with the WPS provisions applicable to their duties and tasks as a worker or handler.

Agricultural employers and their supervisors must clearly understand each of the responsibilities for complying with the WPS and ensure that they are implemented.

Even if the agricultural employer assigns a supervising employee or labor contractor to carry out the duties required by the WPS, the agricultural employer is ultimately responsible for making sure that all those duties are performed.

INFORMATION DISPLAYED AT A CENTRAL LOCATION (CENTRAL POSTING)

Agricultural employers must display certain information, described below, at a central location whenever any worker or handler they employ is on their agricultural establishment **and**, within the past 30 days, a WPS-labeled pesticide product has been applied or a restricted-entry interval (REI) for such pesticide has been in effect. 170.309(h)

The requirement to display information is not applicable to commercial pesticide handler employers.

What information must be displayed?

170.311(a)&(b)

- **Pesticide safety information** can be a poster developed by EPA, or an equivalent way of providing the required WPS pesticide safety concepts (see page 23).
- **Pesticide application information** including:
 - Name of the pesticide applied,
 - Active ingredient(s),
 - EPA registration number,
 - REI,
 - Crop or site treated,
 - Location and description of the treated area(s), and
 - Date(s) and times application started and ended.
- **Hazard information** consists of a copy of the OSHA Safety Data Sheet (SDS) for each pesticide product.



The new pesticide information that must be included as of January 2, 2017 is:

- *Include the crop or site treated along with the location and description of the treated area.*
- *Include the time and date the pesticide application started and ended instead of the “time and date the pesticide is to be applied.”*

The SDS can be kept electronically, however the workers and handlers must have a way to have unrestricted access to the information at all times during their work hours and must be trained on how to access it.

Where must the information be displayed? 170.311(a)(5) and 170.311(b)(2)&(3)

Pesticide safety, application, and hazard information must be displayed at a central location on an agricultural establishment that is readily accessible at all times during normal work hours and can be easily seen and read by workers and handlers. Usually this is a location where employees congregate such as where they check in or out of work, change clothes, eat, etc.

In addition, only pesticide safety information must be displayed at:

- Any permanent decontamination site, and
- Any location where decontamination supplies are required in quantities for 11 or more workers.

*The pesticide application and hazard information do not have to be displayed at decontamination sites, **only** the pesticide safety information.*

When must the information be displayed? 170.309(h) & (l) and 170.311(b)(5)

Display pesticide safety information:

IMPORTANT: Workers are not permitted to enter any area where a pesticide has been applied or an REI has been in effect until the required pesticide application and hazard information for each pesticide product applied to that area is displayed at the central location, the REI has expired, and all treated area warning signs have been removed or covered. 170.309(l)

- Whenever any worker or handler employee is on the agricultural establishment, and
- When, within the past 30 days, a WPS-labeled pesticide product has been applied or a restricted-entry interval (REI) for such pesticide has been in effect.

Display pesticide application and hazard information:

- Within 24 hours after the end of the application if workers or handlers are on the agricultural establishment.

Continue to display the pesticide application and hazard information when workers or handlers are on the establishment until:

- At least 30 days after the REI expires, or
- At least 30 days after the end of the application, if there is no REI for the pesticide, or
- Workers and handlers are no longer on the establishment - if it is less than 30 days after the end of the last applicable REI.

Other employer responsibilities

Employers should inform workers and handlers of any changes to the emergency medical facility information.

- Inform workers and handlers where the pesticide safety, application and hazard information is located. 170.403 & 170.503
- Allow workers and handlers unrestricted access to the posted information. 170.311(a)(6) & (b)(3)
- Ensure the pesticide safety information and pesticide application information remains legible the entire time they are posted. 170.311(a)(7) & (b)(4)
- Update the emergency medical facility information listed with the poster within 24 hours of obtaining new information. 170.311(a)(4)

Criteria for pesticide safety information

Pesticide safety information covers specific concepts that reinforce pesticide safety. These topics must be conveyed in a manner that workers and handlers can understand. All of these points may be on one poster or any alternate display format that conveys the required information. 170.311(a)(2) & 170.311(a)(3)

Before January 2, 2018, the existing pesticide safety information does not change. The content of the safety information may contain either the information consistent with the EPA pesticide safety poster based on the 1995 WPS or the information required by the 2015 revised WPS.

After January 2, 2018, the pesticide safety information must include all of the points listed below:

- Avoid getting on the skin or into the body any pesticides that may be on or in plants, soil, irrigation water, tractors, and other equipment, on used personal protective equipment, or drifting from nearby applications.
- Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.
- Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).
- Wash or shower with soap and water, shampoo hair, and put on clean clothes after work.
- Wash work clothes separately from other clothes before wearing them again.
- If pesticides are spilled or sprayed on the body use decontamination supplies to wash immediately, or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.
- Follow directions about keeping out of treated areas and application exclusion zones.
- Instructions to employees to seek medical attention as soon as possible if they believe they have been poisoned, injured, or made ill by pesticides.
- The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment. This information must be clearly identified as emergency medical contact information on the display.
- The name, address, and telephone number of the state or tribal pesticide regulatory agency.

EPA will develop updated pesticide safety posters with the revised content. Agricultural employers may use the EPA safety posters or display the information in an alternate format that meets the WPS requirements.

The agricultural employer must update the pesticide safety information display within 24 hours of notice of any changes to the emergency medical facility information.

RECORDKEEPING: PESTICIDE APPLICATION AND HAZARD INFORMATION

If the pesticide application and hazard information is required to be displayed, the agricultural employer must keep a record of the pesticide application and hazard information on the establishment for 2 years from the expiration date of the REI of the pesticide applied. 170.311(b)(6)

Pesticide records must contain:

- Name of the pesticide applied,
- Active ingredient,
- EPA registration number,
- REI,
- Crop or site treated,
- Location and description of the treated area(s),
- Date(s) and times application started and ended, and
- Safety Data Sheet of the pesticide applied.

Pesticide records must be maintained for any covered use of a WPS-labeled pesticide for either general-use or restricted-use pesticides (even if state or tribal laws do not require pesticide recordkeeping).

REQUESTS FOR RECORDS OF PESTICIDE APPLICATION AND HAZARD INFORMATION

The pesticide application and hazard information that must be provided is limited to the 2-year record retention requirement. Information must be provided within 15 days of the request. 170.311(b)(7)

Workers and handlers may request a copy of, or access to, the pesticide application information and hazard information if:

- The person is, or was employed as a worker or handler by the establishment during the period when the information was to be displayed and maintained, and
- The request is made orally or in writing.

Treating medical personnel or a person acting under their supervision, may request access to, or a copy of pesticide application and hazard information for the diagnosis or treatment of a worker or handler who was employed on the agricultural establishment during the period that the information was required to be displayed. This request can be made orally or in writing. The information must be provided promptly after receiving the request. 170.311(b)(8)

A designated representative may request access to, or a copy of pesticide application and/or hazard information for a worker or handler. The request must be made in writing and contain the following information:

- The name of the worker or handler being represented.
- A description of the specific information being requested including:
 - Dates of employment of the worker or handler,
 - The date(s) for which the records are requested,
 - Type of work conducted by the worker or handler during the period for which the records are requested, and
 - The specific application and hazard information requested.
- A written statement clearly designating the representative to obtain this information on the worker's or handler's behalf, with the worker's or handler's printed name and signature, the date of the designation, and the printed name and contact information for the designated representative.
- Where to send the information, if the information is to be sent.

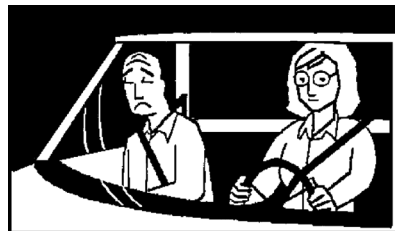
Upon receiving a written request from a designated representative, complete with all of the required information, the agricultural employer must provide a copy of, or access to the requested information within 15 days. 170.311(b)(9)

If a record has been previously provided without cost to a worker or handler or their designated representative, a reasonable fee may be charged for duplicate records but the fee may not include any non-discriminatory costs (no overhead charges). 170.311(b)(9)

There is a separate WPS provision that requires the agricultural employer to provide certain information to treating medical personnel if a worker or handler has been exposed to a pesticide on the agricultural establishment and needs emergency medical treatment. See the section on Emergency Assistance for more details.

EMERGENCY ASSISTANCE 170.309(f)

The agricultural employer must provide transportation and emergency information promptly for their workers after learning of the possible poisoning or injury if:



Employers can “make transportation available” by:

- Taking the employee to the medical care facility, or
- Calling an emergency vehicle, such as an ambulance, or
- Making sure the employee has a ride to the medical care facility with someone else.

- There is reason to believe that a worker or handler experienced a potential pesticide exposure during his or her employment on their employer’s agricultural establishment, or
- They show symptoms similar to those associated with acute exposure to pesticides during or within 72 hours after his or her employment on the agricultural establishment, and needs emergency medical treatment.

Provide emergency transportation 170.309(f)(1)

Make emergency transportation available to take that person from the agricultural establishment (including any worker housing area on the establishment) to a medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

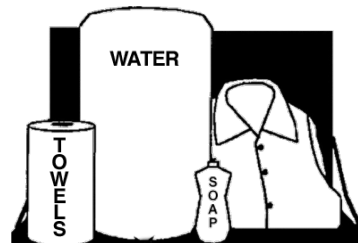
Provide emergency information 170.309(f)(2)

Provide all of the following information to the treating medical personnel:

- Copies of the applicable SDS, the pesticide product name, EPA registration number and active ingredient(s) for each pesticide product to which the person may have been exposed.
- Type of application or how the pesticide was used on the agricultural establishment.
- The circumstances that could have resulted in exposure to the pesticide.

DECONTAMINATION SUPPLIES FOR WORKERS & HANDLERS

To prevent, or mitigate pesticide exposures, the agricultural employer is required to provide supplies to each worker or handler (including early-entry workers) for routine washing to remove pesticide residues, emergency decontamination, and immediate eye flushing in certain situations. What supplies must be provided, when, where, and for how long are covered in Chapter 3 for workers and Chapter 4 for handlers.



PESTICIDE SAFETY TRAINING

All workers and handlers employed by an agricultural employer must receive annual WPS training as a worker or as a handler (except as provided for in the exemptions or exceptions). Employees must receive WPS training before they perform any worker or handler task on the establishment. Presented below are the training requirements for both workers and handlers. Additional information on worker training is in Chapter 3 and on handler training in Chapter 4.



The following are key requirements for training workers and handlers:

- **There is no grace period for WPS training!** The agricultural employer must ensure that WPS training is completed within the last 12 months before:
 - Any worker enters a treated area on an agricultural establishment where, within the last 30 days, a WPS-labeled pesticide product has been used or a REI for such pesticide has been in effect.
 - Any handler conducts any handling task.
- Workers and handlers are exempt from WPS training if they are currently:
 - Certified as an applicator of restricted-use pesticides.
 - Certified as a crop advisor by a program acknowledged as appropriate in writing by EPA, or a State or Tribal agency responsible for pesticide enforcement. 170.401(b)
- Additionally, a worker is exempt from WPS worker training if they have been trained as a WPS handler within the last 12 months.
- Only qualified trainers may provide WPS training.
- Train workers and handlers annually.
- Provide training in a manner that the workers or handlers can understand, using a translator if necessary.
- Present training using EPA-approved materials either orally from written materials or audio-visually.
- Keep records of worker or handler training for 2 years.
- Make training records available to employees upon request.
- All training requirements are effective January 2, 2017 EXCEPT the expanded training content which is effective January 2, 2018.

Owners of agricultural establishments and their immediate families and certified crop advisors are exempt from WPS training requirements. See Chapter 6: Exemptions and Exceptions.

Valid currently certified applicators and certified crop advisors are exempt from WPS worker and handler training. Any worker who has been trained as a handler does not need to receive worker training.

EPA does NOT supply or issue WPS training verification cards.

What topics must the training cover?

Worker and handler training content effective January 2, 2018 is itemized on page 23. Until January 2, 2018, WPS safety training content remains the same as in the 1995 rule although ***all training materials used after January 2, 2017 must be approved by EPA.***

The designated representative (DR) **CANNOT** request a copy of a training record on behalf of a worker/handler. The DR only has the right to access the application info and the SDS.

The expanded content of training topics is the only requirement of worker and handler training that has a delayed implementation date of January 2, 2018 (or no more than 6 months after EPA has published the availability of the training materials but not before January 2, 2018). Both workers and handlers will have to be trained on the same 23 topics with handlers requiring an additional 13 topics (total of 36 topics). Refer to Training Criteria for Workers and Handlers in Appendix B for information on specific training topics.

How often must workers and handlers be trained?

An attendance roster of the WPS training with all of the training record information meets the recordkeeping requirement.

Once every 12 months (annually), counting from the end of the month in which the previous training was completed. 170.401(a) & 170.501(a)

Training records 170.401(d) & 170.501(d)

Training records for each worker and handler must be kept on the establishment for 2 years from the date of training. The training record must include:

- The worker's or handler's printed name and signature,
- The date of training,
- Trainer's name,
- Evidence of the trainer's qualification to train,
- Employer's name, and
- Information to identify which EPA-approved training materials were used for the training (i.e., the EPA document number or EPA approval number for the materials).

If a worker or handler was trained at another establishment, you may get a copy of the training record and keep as your record of training. If no record is provided, you must provide WPS training and maintain the training record.

WPS trainers are not required to provide each person trained with a copy of the training record. However, they must provide the record if the trained employee requests it. Individual training record forms or other methods of maintaining the required training information may be developed and used to meet this requirement.

Who qualifies to be a WPS trainer? 170.401(c)(4) & 170.501(c)(4)

The person who conducts *worker* training must:

- Currently be a certified applicator of restricted-use pesticides (in any category of certification), or
- Currently be designated as a trainer of certified pesticide applicators, handlers or workers by the EPA or the state, or tribal agency having jurisdiction, or
- Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of workers.

The person who conducts *handler* training must:

- Currently be a certified applicator of restricted-use pesticides (in any category of certification), or
- Currently be designated as a trainer of certified pesticide applicators or handlers by a state, federal, or tribal agency having jurisdiction, or
- Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of handlers.

How is training to be conducted? 170.401(c)(1) & 170.501(c)(1)

Trainers of workers or handlers must:

- Use EPA-approved training materials,
- Present the training orally from written materials or audio visually,
- Present the information in a manner that the trainees can understand, using a translator if necessary,
- Be present at all times during the training to respond to trainees' questions, and
- Ensure training quality by providing an environment conducive to training that is reasonably free of distractions.

WPS trained handlers may NOT train workers unless they meet one of the qualifications for conducting worker training.

WPS training materials produced by EPA will bear the official EPA logo and have an EPA publication number. WPS training materials developed by others and approved by EPA will bear an EPA approval number and an EPA statement of approval for use for WPS training.

Anyone who trains workers must use non-technical terms. Example: Instead of referring to a symptom of heat exhaustion as hyperthermia, say that the body is getting too hot and you could get very sick and maybe die if action is not taken immediately.

ESTABLISHMENT-SPECIFIC INFORMATION 170.403 and 170.503(b)

Workers and handlers must receive establishment-specific information in addition to general pesticide safety training.

The agricultural employer must provide information specific to their agricultural establishment to workers and handlers when they first enter the establishment and before beginning WPS tasks in areas where, within the last 30 days, a WPS-labeled pesticide product has been applied or a REI for such pesticide has been in effect.

The agricultural employer must inform workers and handlers, in a manner they understand, about the location of the following on the establishment:

- Pesticide safety information,
- Pesticide application and hazard information, and
- Decontamination supplies.

If a worker/handler is WPS trained at farm A and later in the summer starts to work for farm B (and the agricultural employer of farm B obtains the worker's/handler's training records), the farm B agricultural employer only needs to provide the worker/handler with the establishment-specific information which requires no recordkeeping.

Establishment-specific information must be provided even if the worker or handler has already received the annual pesticide safety training on another agricultural establishment and verification of such training is provided to the agricultural employer. Recordkeeping is NOT required for providing this information.

Providing establishment-specific information is not a requirement for commercial pesticide handler employers.

EMPLOYER INFORMATION EXCHANGE

Whenever a handler, including crop advisors, of a commercial pesticide handler employer (CPHE) conducts pesticide handling tasks on an agricultural establishment, the agricultural employer must provide the CPHE with specific information about treated areas on the establishment they will be working on.



This exchange of information can be accomplished through electronic media, telephone or other means.

Conversely, the CPHE (employer of the for-hire/custom applicators or crop advisors) must provide the agricultural employer, as their customer and the operator of the agricultural establishment, with certain information about a pesticide product before applying it on the establishment.

Information provided to the commercial pesticide handler employer (CPHE) from an agricultural employer 170.309(k)

The operator of an agricultural establishment must inform the hired CPHE of the following:

- The specific location and description of any treated areas on the agricultural establishment under a REI that the handler may be in (or walk within 1/4 mile of), and
- Any restrictions on entering those areas.

The CPHE must inform their handler of the information provided by the agricultural employer. 170.313(h)

Information provided to an agricultural employer from a commercial pesticide handler employer (CPHE) 170.313(i) & (j)

To allow an agricultural employer to inform workers on the establishment about a pesticide application that is, or will be performed, the CPHE must inform the agricultural employer of the following:

- Specific location and description of the area(s) on the agricultural establishment that are to be treated with a pesticide,
- Date and start and estimated end times of the application,
- Pesticide product name, EPA registration number, and active ingredient(s),
- REI for the pesticide product,
- Whether the pesticide product labeling requires posting, oral notification or both, and
- Any other specific requirements on the pesticide product labeling concerning protection of workers and other persons during or after application.

It is important for agricultural employers to make arrangements with the CPHE on how they will receive the required pesticide application information so they can take the necessary steps to protect workers and other persons on the establishment during pesticide applications, provide notification of pesticide applications to workers, and provide the application and hazard information at the central display site.

What if the information changes?

The agricultural employer must be provided with updated information PRIOR to the application when there are any changes to:

- The location to be treated,
- REI,
- Method of notification,
- Labeling requirements to protect workers/other persons, or
- The start time if it will be earlier than estimated.

If the pesticide product information changes or there are other changes to the date, start and end time, the CPHE must provide the updated information to the agricultural employer within 2 hours after completing the application.

Changes to the estimated application end time of less than one hour do not need to be reported to the agricultural employer.

RETALIATION AGAINST EMPLOYEES IS PROHIBITED

The agricultural employer, their supervisors or others cannot intimidate, threaten, coerce, discriminate against, prevent, discourage, or fire any worker or handler from complying or attempting to comply with the WPS. Additionally, the agricultural employer cannot retaliate in any manner if any worker or handler:

- Refuses to participate in any activity that the worker or handler reasonably believes to be in violation of the WPS,
- Has, or is about to report WPS noncompliance to appropriate authorities for enforcement of WPS provisions, or
- Agrees to provide information to the EPA or any duly authorized representative of a Federal, State or Tribal government about WPS compliance, or assists or participates in any manner in an investigation, proceeding, or hearing concerning WPS compliance.

Retaliation is a serious violation of federal law (170.315)

For example: If the employer or supervisor refuses to provide PPE or tells an early-entry worker to enter a treated field during the REI without providing specific information and PPE, and the employee files a complaint to authorities, the employer may not fire or threaten that person in any manner or allow any acts of retaliation by any employee.

EMPLOYER RESPONSIBILITIES FOR WPS VIOLATIONS

Penalties for noncompliance 170.317

Agricultural employers of workers and handlers can be subject to civil and criminal penalties if they do not comply with the federal WPS including all revisions to this rule. Failure to comply is a pesticide misuse violation since the WPS is referenced on applicable pesticide product labeling. Failure to comply with distinct requirements of the WPS can result in independently assessable charges, even if the violative acts occurred during one pesticide application. See Chapter 7: Compliance with the Worker Protection Standard.

Employer responsibilities for supervisors or labor contractors assigned to carry out WPS requirements

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) includes provisions that hold owners and agricultural employers liable for a WPS penalty if another person employed by or acting for them including labor contractors, farm managers and/or other supervisors, fails to comply with any WPS requirements. The term “acting for” includes both employment and contractual relationships.

