

# CHAPTER 7 COMPLIANCE WITH THE WORKER PROTECTION STANDARD

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



## EMPLOYER RESPONSIBILITIES FOR WPS COMPLIANCE

EPA's goal in revising the WPS regulations is to strengthen protections for the nation's 2 million agricultural workers and their families working on farms, forests, nurseries, and enclosed space production facilities (e.g., greenhouses, mushroom houses, etc.). The 2015 revisions also ensure workers and handlers receive workplace protections comparable to those that are already provided to workers in other industries, while still considering the unique needs of agricultural operations.

This manual provides information to help employers comply with the requirements of the federal WPS for agricultural pesticides as originally published in 1992, amended in 1995, 1996 and 2004, and revised in 2015. It is the employer's responsibility to understand what requirements apply to you and to comply with all those requirements. However, EPA, states and tribes that have the primary responsibility to implement the WPS, want to help owners and employers on agricultural establishments to comply with the regulations. If you have questions, contact your state agency or tribal contact. In most states, the WPS is implemented by the state department of agriculture. You can find state and tribal WPS contacts at the National Pesticide Information Center (NPIC).

In addition to the state or tribal contact, EPA provides information, training materials, and other tools on its WPS website and is partnering with other groups to provide assistance and information (see Appendix D: Contacts and Additional Resources). You can download WPS materials at EPA's WPS training and safety website and at the Pesticide Educational Resources Collaborative (PERC) website. You can order hardcopy WPS materials online at EPA's National Service Center for Environmental Publications (NSCEP) or by telephone at 1-800-490-9198 or fax at 301-604-3408. See links below.

State and Tribal WPS contacts - <http://npic.orst.edu/mlr.html>

EPA's WPS website - <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps>

EPA's training and safety website - <https://www.epa.gov/pesticide-worker-safety/training-and-safety-materials-implementing-worker-protection-standard>

PERC website - <http://pesticideresources.org/>

NSCEP website - <https://www.epa.gov/nscep>

While the following topics were discussed in previous chapters, they are included here to emphasize their importance:

- Retaliation against employees,
- Use of a pesticide in a manner inconsistent with the label,
- Employer responsibilities for supervisors or labor contractors assigned to carry out WPS requirements, and
- WPS recordkeeping responsibilities.

This chapter also includes information on avoiding discrimination in hiring, WPS penalties and fines, and a description of EPA's compliance assurance process.

**Retaliation against employees** 170.315

Agricultural employers, commercial pesticide handler employers, or others cannot intimidate, threaten, coerce or 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,
- Any worker or handler has, or is about to report WPS noncompliance to appropriate authorities for enforcement of WPS provisions, or
- Any worker or handler agrees to provide information to the EPA or any duly authorized representative of a Federal, State or Tribal agency 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 a 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.*

**Use of a pesticide in a manner inconsistent with its labeling** 170.317(a)

Agricultural employers, commercial pesticide handler employers, crop advisors, handlers, owners of agricultural establishments and others can be subject to federal civil and criminal penalties if found in violation of the WPS. Failure to comply with the requirements of the WPS can result in multiple and independent assessable charges, even if the violations occurred during one pesticide application. Because the WPS is referenced on a pesticide product label, users of that pesticide must comply with all of its requirements unless an exception is allowed for in the WPS or there are product-specific directions on the pesticide product labeling that are different from the WPS requirements. Failure to comply is unlawful and considered a pesticide misuse violation under The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 12(a)(2)(G) — also known as ***use of a pesticide in a manner inconsistent with its labeling***.

Note that states or tribes may incorporate the WPS by reference (i.e., adopt the federal regulations as their state or tribal regulations) or have their own regulations that are equivalent to, or more stringent than, the federal WPS regulations. Where state, tribal, or other local regulations go beyond or are more stringent than the federal WPS regulations, agricultural employers and commercial pesticide handler employers will have to comply with both federal WPS requirements and all additional state, tribal, or other local requirements.

## Employer responsibilities for supervisors or labor contractors assigned to carry out WPS requirements 170.317(c)

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 fails to comply with any WPS requirements. This includes labor contractors, farm managers and/or other supervisors in both employment and contractual relationships.

*For example, an agricultural employer may hire a labor contractor to supply workers and to provide pesticide safety training to the workers. If the labor contractor fails to provide appropriate safety training to the workers, the agricultural employer is still ultimately responsible for ensuring compliance with the training requirements.*

## WPS recordkeeping responsibilities 170.309(m) & 170.313(m)

Agricultural employers and commercial pesticide handler employers must provide records or other information required by WPS for inspection and copying upon request by an employee of EPA or a duly authorized representative of a Federal, State or Tribal agency responsible for pesticide enforcement. The required WPS records include:

- Documentation of pesticide safety training for workers or handlers.
- Application information and safety data sheets.
- Documentation of respirator medical evaluations, fit testing and training, if pesticide product labeling requires the use of respirators.

*The WPS requirements for decontamination supplies do NOT preclude employers from having to comply with the OSHA Field Sanitation Standard or other OSHA hazard communication requirements that are intended to protect workers and handlers from agricultural non-pesticide hazards.*  
170.317(d)

## AVOIDING DISCRIMINATION IN HIRING

Refusing to hire an applicant who cannot understand the language or languages in which training is usually provided may constitute discrimination on the basis of national origin. Such discrimination is actionable under Title VII of the Civil Rights Act of 1964 or the Immigration Reform and Control Act of 1986 (IRCA). For more information about your responsibilities under Title VII of the Civil Rights Act of 1964, contact the U.S. Equal Employment Opportunity Commission. For details about IRCA anti-discrimination provisions, contact the Special Counsel for Immigration-Related Unfair Employment Practices, U.S. Department of Justice.

*A language barrier does not exempt an employer from providing training or other responsibilities of the WPS. Even if training is not normally provided in the particular language of a job applicant, or if a translator is not readily available, employers (including agricultural employers or commercial pesticide handler employers) are still responsible to provide the protections afforded under the WPS.*

## WPS PENALTIES AND FINES

Currently, a federal civil penalty of up to \$2,750 per violation may be assessed against private applicators (owners/operators of agricultural establishments) and other persons, and up to \$18,750 per violation against commercial applicators (owners/operators of pesticide handler establishments) and other persons. Since Congress passed the Civil Monetary Penalty Inflation Adjustment Rule under the Debt Collection Improvement Act of 1996, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, civil penalties have been increased due to inflation and Congress' intent on creating deterrence to noncompliance. The next civil penalty adjustment is expected to occur in January 2017.

## EPA'S COMPLIANCE ASSURANCE PROCESS

EPA, state, and some tribes usually monitor compliance with WPS regulations through periodic inspections. Your establishment may be inspected if it was the subject of a complaint or tip, was randomly selected, or was targeted for inspection.

The inspector will gather information to assess whether your establishment is in compliance with the WPS requirements. You should accompany the inspector and ask questions if you are unclear about any WPS requirements.

If violations of law are identified and documented properly as a result of an inspection, pesticide regulatory agencies may initiate a civil or criminal enforcement action. EPA typically initiates a civil enforcement action by filing an administrative complaint with the Office of Administrative Law Judges, pursuant to the procedural rule set forth in 40 CFR, Part 22. EPA may also initiate a criminal action in federal court to address knowing and willful FIFRA violations.

### **Typical types of enforcement actions include the following:**

- A warning letter.
- An administrative order.
- An administrative order with penalty.
- A civil lawsuit.
- Criminal prosecution.

### **The penalty in a given case will depend on many things, including:**

- The number, length, and severity of the violations,
- The economic benefit obtained by the violator, and
- The violator's ability to pay.