

Office of Enforcement and Compliance Assurance

INSPECTION MANUAL

Worker Protection Standard Inspection Manual

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Revision History

This table shows changes to this controlled document over time. The most recent version is presented in the top row of the table. Previous versions of the document are maintained by the Document Control Coordinator.

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Inspection Manual Revisions

This Worker Protection Standard (WPS) Inspection Manual is an inspection support tool provided by the U.S. Environmental Protection Agency (EPA), for use by EPA regions, states and tribes conducting federal inspections under the Federal Insecticide, Fungicide, and Rodenticide Act and is a supplement to the EPA FIFRA Inspection Manual released in 2013. States and tribes may also conduct inspections under their own authority and credentials. This document supersedes the EPA WPS Agricultural Inspection Guidance released in February 2012. EPA appreciates the valuable contributions made by EPA Regions, states and tribes to improve the manual.

DISCLAIMER

This Inspection Manual is not a regulation and, therefore, does not add, eliminate or change any existing regulatory requirements. The statements in this document are intended solely as guidance. This document is not intended, nor can it be relied on, to create any rights enforceable by any party in litigation with the United States. EPA, state and tribal officials may decide to follow the guidance provided in this document, or to act at variance with the guidance, based on analysis of site-specific circumstances. Deviations from this document on the part of any duly authorized official, inspector, or agent shall not be a defense in any enforcement action; nor shall deviation from this manual constitute grounds for rendering the evidence obtained thereby inadmissible in a court of law. This manual may be revised without public notice to reflect changes in EPA's policy.

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CHAPTER 5. CONDUCTING THE INSPECTION

WPS inspectors must present identification, SLA or federal credentials and issue a Notice of Inspection (NOI) (required for inspections using federal credentials) before proceeding to conduct an inspection, or follow appropriate SLA procedures.

When using federal credentials, the inspector must issue the owner, operator, or agent in charge a completed Notice of Inspection (EPA Form 3540-2), which contains the reason for the inspection, whether the inspection is a “neutral scheme inspection” or “for cause” (including any suspected violations) and signed by the inspector and by the owner/operator.

EPA prefers that all routine inspections be unannounced, but acknowledges that some SLAs are required to provide advance notification of inspections, and announced inspections may be needed for good time management to ensure that the establishment is in operation at the time of the visit and that a responsible person is present for the inspection.

Once an inspector is granted consent to conduct an inspection, a typical WPS inspection at an agricultural establishment will consist of an opening conference, a review of required records and interview of the owner/agricultural establishment employer, a site visit, and interviews of workers and handlers.

A typical inspection of a commercial pesticide handler employer will include a review of required records, employer interviews and interviews with handlers (as appropriate).

For more information on gaining access and what to do if entry is refused, see Chapter 5 of the FIFRA Inspection Manual.

5.1 OPENING CONFERENCE

It is very important during initial discussions to set the tone of the inspection and establish that the inspector is there to collect the facts. Communication between the employer/owner and the inspector should be encouraged so that the inspector can obtain all needed information and the employer/owner is able to ask questions about the regulations if needed. Inspectors using federal credentials may explain during the opening conference that no compliance determinations will be made during the inspection. Some SLAs, however, have the authority to make compliance decisions in the field and to issue notices of violation.

In the opening conference, the inspector needs to identify the owner, operator and/or agent in charge and identify their responsibilities. It is crucial to understand everyone’s roles at each

establishment as they will determine each person's responsibilities under WPS. Considerations include:

- Is the owner certified to apply the pesticide products?
- Does the owner employ a commercial handler?
- Does the owner hire workers and handlers directly, or a farm labor contractor to provide workers and handlers?
- Does the owner hire family members as workers and handlers?
- If the agricultural employer has workers, it is important to establish if the employer pays them (as opposed to barter, or other non-monetary compensation).

Basic site-specific information should also be obtained.

- It may be helpful to bring an aerial map of the area so the owner/operator can locate important information, such as information display locations, decontamination sites, mixing locations and the furthest fields.

More information on pesticide use inspection procedures is provided in Chapter 8 of the FIFRA Inspection Manual.

5.2 DOCUMENTATION

Collecting records that document pesticide use is an essential part of every use inspection.

- Obtain records that contradict or corroborate label statements regarding pesticide use.
- Basic information about the inspection and the establishment should be collected along with documentation of suspected violations.
- Checklists are useful tools to make sure an inspector examines all applicable requirements, indicates which requirements were not applicable, and records elements found to be in compliance.
 - However, a checklist may not be sufficient to later identify violations or to support an enforcement action.
- If violations are suspected at an establishment, the inspector should identify and document each suspected violation to the extent possible.
- Even though the inspector may not be present during the pesticide application to view the application exclusion zone (AEZ) (for information on the AEZ, see section 5.5.3) or identify what PPE was worn, for example, the inspector should collect as much evidence of any suspected past violations as possible, including signed witness statements and photographs, where appropriate.
- In addition, it is also possible to document missing information as required.
- Incomplete safety information may be documented by a photograph, or missing SDSs can be documented by an inventory of pesticides held on the establishment versus the SDSs available.
- **Documentation of both compliance and any noncompliance will be necessary in for cause inspections.**

Document compliance with key requirements:

- Photograph information, such as at the central display, decontamination supplies, and PPE.
- Collect statements to document answers to questions.

In addition to the procedures described in Chapter 8 of the FIFRA Inspection Manual, the following items apply specifically to WPS inspections.

Basic inspection and establishment information:

- Date, name of inspector, type of inspection (unannounced/announced, neutral or for cause);
- Owner and manager of the establishment (name, address, email (optional) and telephone). Indicate if immediate family members are employed;
- Applicator (self-apply, employee, or for-hire) and record certification.

WPS Pesticides Applied:

- List product names and/or EPA registration numbers for the last three (at a minimum) pesticide products with labeling that included the WPS reference statement that were applied at the establishment;
- To facilitate evaluation of the WPS use requirements during the inspection, for each of the products record:
 - Date applied;
 - Weather conditions at time of application;
 - Method of application (e.g., backpack sprayer, air blast) for AEZ determination (for information on the AEZ, see section 5.5.3);
 - Specific application requirements, precautions and protections;
 - Notification and posting requirements;
 - The REI;
 - PPE requirements.

Signed statements:

- Although the inspector may not be present during key events such as the pesticide application or during the REI, the inspector should collect as much evidence of any suspected past violations as possible, including signed witness statements, where appropriate.
 - For example, if PPE required for a recent application is not present on-site during the inspection, the inspector should ask the handler if the required PPE was provided and worn during the application. If the PPE was not provided to the handler, the inspector should note this information and if possible, obtain a signed statement from the handler stating that the required PPE was not provided for that application.

For a more detailed discussion of documentation of use inspections, including for cause inspections, refer to Chapter 8 of the FIFRA Inspection Manual.

5.3 REVIEW PESTICIDE LABELS ON SITE

The inspector should review labels of pesticides on site and note appropriate label requirements. The pesticide labels reviewed should be documented in the report. Note key information, such as:

- the date pesticides were applied;
- weather conditions at time of application;
- method of application (e.g., backpack sprayer, air blast) for AEZ determination (for information on the AEZ, see section 5.5.3);
- specific application requirements, precautions and protections;
- notification and posting requirements;
- the REI; and
- PPE requirements.

5.4 RECORD REVIEW

Request and review the employer's information on safety training, pesticide application and hazard information (SDSs), and respirator records.

5.4.1 *Application and Hazard Information Records* (§170.311)

All pesticide application and hazard information (SDS) that is required to be displayed must be retained on the establishment for two years after the expiration of the REI applicable to the pesticide application conducted. The records must include the following information for each WPS-covered pesticide applied:

- The safety data sheet;
- The name, EPA registration number, and active ingredient(s);
- The crop or site treated and the location and description of the treated area;
- The date(s) and times the application started and ended;
- The duration of the applicable restricted-entry interval.

5.4.2 *Pesticide Safety Training Records*

(§170.401(d), §170.501(d))

For each worker or handler trained, the agricultural employer must maintain on the agricultural establishment, for two years from the date of the training, a record documenting each worker or handler's training. The records must include:

- The trained worker or handler's printed name and signature;

Training Content Revisions Compliance Date

EPA published a Federal Register notice on June 22, 2018 announcing the availability of WPS training materials for both workers and handlers. With this notice, WPS pesticide safety training must have the full expanded content that is in the 2015 WPS (§170.401 and §170.501) as of Dec. 19, 2018.

- The date of the training;
- Information identifying which EPA-approved training materials were used;
- The trainer's name and documentation showing that the trainer met the requirements to be a trainer, at the time of the training;
- The agricultural employer's name.

An agricultural employer who provides, directly or indirectly, safety training must provide to the worker or handler, upon request, a copy of the record of the training.

An agricultural employer may accept copies of training records from outside sources if all required information (listed above) is included and if it appears to be legitimate.

5.4.3 Respirator Safety Records (*§170.509(b)(10)*)

The handler employer must maintain records for two years documenting the completion of the requirements of §170.509(b)(10)(i) through (iii) (i.e., medical evaluation; fit testing; and training as required by OSHA regulations at 29 CFR 1910.134). The records must be kept at the establishment.

The EPA regulations require compliance with certain OSHA regulations. Therefore, it is a violation of FIFRA to violate the OSHA regulations cited below in italics (provided in full in Appendix C):

5.4.3.1 Medical Evaluation (170.509(b)(10)(i))

Handler employers must provide handlers with a medical evaluation by a physician or other licensed health care professional in accordance with 29 CFR 1910.134(e).

29 CFR 1910.134(e): (1) General. The employer shall provide a medical evaluation to determine the employee's ability to use a respirator, before the employee is fit tested or required to use the respirator in the workplace. The employer may discontinue an employee's medical evaluations when the employee is no longer required to use a respirator. (2) Medical evaluation procedures. (i) The employer shall identify a physician or other licensed health care professional (PLHCP) to perform medical evaluations using a medical questionnaire or an initial medical examination that obtains the same information as the medical questionnaire.

The records must include the written medical clearance documentation from the physician or other licensed health care professional, which is called a "written recommendation" in the OSHA regulations.

29 CFR 1910.134(e)(6): In determining the employee's ability to use a respirator, the employer shall:

- *Obtain a written recommendation regarding the employee's ability to use the respirator from the PLHCP. 1910.134(e)(6)(i). The recommendation shall provide only the following information:*

- *Any limitations on respirator use related to the medical condition of the employee, or relating to the workplace conditions in which the respirator will be used, including whether or not the employee is medically able to use the respirator; 1910.134(e)(6)(i)(A)*
- *The need, if any, for follow-up medical evaluations; 1910.134(e)(6)(i)(B)*
- *A statement that the PLHCP has provided the employee with a copy of the PLHCP's written recommendation.1910.134(e)(6)(i)(C)*

Ensure all handlers that use respirators have been medically evaluated and approved.

- The handler employer's records should only contain the medical clearance documentation listed above.
- It should **not** include any completed medical questionnaires or detailed notes from a physician's or other licensed health care professional's (PLHCP) medical examination. That information is confidential and should not be in the possession of the owner/employer.
- If the inspector sees any other health records other than the medical clearance documentation, the inspector should not review or copy them and should point out that the employer should not have confidential medical information in their records.

Compare the types of respirators for which handlers have clearance against the respirators required by the pesticide product labels.

- The inspector also should note any restrictions included in the clearance documentation.
 - For example, a condition of clearance may be that the handler can only use the respirator when the temperature is below a specified level. Depending on the situation, the inspector may be able to determine that a handler is or is not following the restrictions in the clearance documentation.

5.4.3.2 Fit Testing (170.509(b)(10)(ii))

Handler employers must provide handlers with fit testing using the respirator specified on the pesticide labeling in a manner that complies with 1910.134(f).

29 CFR 1910.134(f): Before an employee may be required to use any respirator with a negative or positive pressure tight-fitting facepiece, the employee must be fit tested with the same make, model, style, and size of respirator that will be used. This paragraph specifies the kinds of fit tests allowed, the procedures for conducting them, and how the results of the fit tests must be used.

The employer shall ensure that employees using a tight-fitting facepiece respirator pass an appropriate qualitative fit test (QLFT) or quantitative fit test (QNFT) as stated in this paragraph. 1910.134(f)(1).

The employer shall ensure that an employee using a tight-fitting facepiece respirator is fit tested prior to initial use of the respirator, whenever a different respirator facepiece (size, style, model or make) is used, and at least annually thereafter. 1910.134(f)(2).

Note: Particulate filtering facepiece respirators (formerly known as dust/mist filtering respirators) are considered tight-fitting respirators and therefore require a fit test.

Fit test records must be in accordance, with 29 CFR 1910.134(m)(2)⁸.

29 CFR 1910.134(m)(2): The OSHA recordkeeping requirements for fit testing are:

(2) Fit testing. (i) The employer shall establish a record of the qualitative and quantitative fit tests administered to an employee including:

(A) The name or identification of the employee tested;

(B) Type of fit test performed;

(C) Specific make, model, style, and size of respirator tested;

(D) Date of test; and

(E) The pass/fail results for QLFTs or the fit factor and strip chart recording or other recording of the test results for QNFTs.

Review the fit testing records to make sure all handlers have successfully completed fit tests for the respirators they use.

- The inspector may be able to confirm the type of respirator during the handler interview.
- The inspector should only make a copy or take a photo of a fit test record when documenting a suspected violation.
 - For example, if the inspector has determined that a handler is using a respirator but did not pass the fit test using that specific respirator, the inspector should document the violation by obtaining a copy of the fit test records for the different respirator.

5.4.3.3 Respirator Training (170.509(b)(10)(iii))

Handler employers must provide handlers with training in the use of the respirator specified on the pesticide product labeling consistent with the provisions in 29 CFR 1910.134(k)(1)(i) – (vi).

29 CFR 1910.134(k)(1)(i) – (vi): Training and information. This paragraph requires the employer to provide effective training to employees who are required to use respirators. The training must be comprehensive, understandable, and recur annually, and more often if necessary. This paragraph also requires the employer to provide the basic information on respirators in appendix D of this section to employees who wear respirators when not required by this section or by the employer to do so. 1910.134(k)

The employer shall ensure that each employee can demonstrate knowledge of at least the following

- *Why the respirator is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the respirator; 1910.134(k)(1)(i)*

- *What the limitations and capabilities of the respirator are; 1910.134(k)(1)(ii)*
- *How to use the respirator effectively in emergency situations, including situations in which the respirator malfunctions; 1910.134(k)(1)(iii)*
- *How to inspect, put on and remove, use, and check the seals of the respirator; 1910.134(k)(1)(iv)*
- *What the procedures are for maintenance and storage of the respirator; 1910.134(k)(1)(v)*
- *How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators; 1910.134(k)(1)(vi)*

OSHA does not identify the specific records that must be kept to document training. Records similar to those specified for the pesticide safety training would suffice, such as the:

- Trained handler's printed name and signature;
- Date of the training;
 - Information identifying what training materials were used or what training points were covered;
 - Trainer's name.

The inspector should review and document whether all handlers who use respirators have completed training.

5.5 EMPLOYER/SUPERVISOR INTERVIEWS

Under the WPS, employers and supervisors include agricultural employers and commercial pesticide handler employers. In situations where the agricultural employer has contracted with the farm labor contractor to comply with WPS protections, the inspector should interview both the agricultural employer and the farm labor contractor to determine if appropriate requirements were met. For more information on farm labor contractors see section 3.4.

A commercial pesticide handler employer is any person other than an agricultural employer, who employs any handler to perform handler activities on an agricultural establishment. A labor contractor who does not provide pesticide application services or supervise the performance of handler activities, but merely employs laborers who perform handler activities at the direction of an agricultural or handler employer, is not a commercial pesticide handler employer.

The term "agricultural employer," as defined by §170.305, may include owners and managers of agricultural establishments, and employers of agricultural workers and handlers. Workers and handlers may be hired directly by the agricultural employer, or through a farm labor contractor. The agricultural employers are responsible for complying with all WPS regulations in Part 170, however, the agricultural employer may contract with a farm labor contractor to provide some WPS protections such as providing training. Even if the agricultural employer requires these services to be provided by the farm labor contractor, the agricultural employer is ultimately still responsible for ensuring compliance with the WPS. The agricultural employer is also required

under the revised WPS to maintain, on-site, the training records for FLC workers and handlers on the establishment, just as they are for workers and handlers who are hired directly.

5.5.1 Requirements that Apply to Agricultural Employers of Workers, Agricultural Employers of Handlers, and Commercial Pesticide Handler Employers

Below are general agricultural employer and commercial pesticide handler responsibilities established under §170.309 and §170.313 of the WPS. The description includes specific requirements and questions that the inspector may ask the employer or supervisor.

5.5.1.1 General Employer Responsibilities (§170.309 and §170.313)

The applicable regulations are:

Proper Pesticide Use (§170.309(a) and §170.313(a)) – Agricultural employers and commercial pesticide handler employers must: Ensure that any pesticide is used in a manner consistent with the pesticide product labeling when applied on the agricultural establishment.

Handler and Early Entry Worker Minimum Age Requirement (§170.309(c) and §170.313(c)) -- Agricultural employers and commercial pesticide handler employers must ensure that any handler and any early entry worker is at least 18 years old.

The inspector should:

- Ask the employer if any employed handlers or early entry workers are under 18 years old, or if the employer had any handlers or early entry workers who were under 18 after January 2, 2017;
- If, during the inspection, the inspector observes a handler or early entry worker who clearly appears to be under age 18, the inspector may ask the handler or early entry worker for their age. The handler or early entry worker does not need to provide proof of their age. If the handler or early entry worker indicates he or she is under 18, the inspector should document this and follow up with the employer.

Employee Age Verification

The 1986 Immigration Reform and Control Act requires all employers to maintain the I-9 Employment Eligibility Verification form for all employees hired on or after Nov. 6, 1986, who are working in the United States. The Form I-9 includes the birthdate of each worker and how the birthdate was verified by the employer (e.g., driver's license, birth certificate, etc.). For more information on Form I-9, see <https://www.uscis.gov/i-9-central>

All employers are required under federal law to maintain a record (Form I-9) of each employee's birthdate and how the birthdate was verified (e.g., by driver's license, birth certificate). See box on Employee Age Verification. An employer may show the WPS inspector a Form I-9 to prove the handler or early entry worker is at least 18.

- **The WPS inspector may view I-9 forms** to confirm a handler's or early entry worker's age and should make a copy of the form to document the violation if a handler or early entry worker is under 18.
- If the employer does not provide any documentation of the age of the handler or early entry worker, the inspector should record this and should follow up with the handler or early entry worker to obtain documentation of age (if not provided earlier).

Supervisor Tasks and Directions to Workers or Handlers (§170.309(d) and (e) and §170.313(d) and (e)) -- Agricultural employers and commercial pesticide handler employers must provide to each person, including labor contractors, who supervise any workers or handlers, information and directions sufficient to ensure that each worker or handler receives the protections required by the WPS. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this part; and require each person, including a labor contractor, who supervises any worker or handler, to provide sufficient information and directions to each worker and handler to ensure that they can comply.

The inspector should ask the agricultural employer:

- How do you relay information, assign tasks, and provide directions to the supervisors or labor contractors to ensure that the WPS protections are provided to their employees?
- How is the label information provided?

The inspector should ask the commercial handler employer:

- How do you relay information, assign tasks, and provide directions to the handler supervisor to ensure that the WPS protections are provided to handlers?

Pesticide Equipment Inspection and Repair (§170.309(g) and §170.313(l)) -- Agricultural employers and commercial handler employers must: ensure that workers or other persons employed by the agricultural establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under §170.501.

Before allowing any person not directly employed by the agricultural establishment or commercial pesticide handling establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the agricultural employer or commercial pesticide handler employer must provide all of the following information to such person:

- The equipment may be contaminated;
- The potential harmful effects of pesticide exposure;
- Procedures for handling the application equipment to limit exposure; and
- Personal hygiene practices and decontamination procedures.

The inspector should:

- Ask to review handler training records if training records have not already been examined (see section 5.4.2);

- Ask if anyone not directly employed by the establishment ever cleans, repairs, or adjusts pesticide equipment. If so, determine if all appropriate information is provided.

5.5.1.2 Pesticide Safety Training

The applicable regulations are:

Pesticide Safety Training (§§170.401 and 170.501) -- Before any worker performs any task in a treated area on an agricultural establishment where within the last 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that each worker has been trained in accordance with this section within the last 12 months (except for certified applicators, trained handlers, or licensed crop advisors).

Before any handler performs any handler activity involving a pesticide product, the handler employer must ensure that the handler has been trained in accordance with this section within the last 12 months (except for certified applicators, or licensed crop advisors).

The inspector should:

- Ask to review training records if they have not already been reviewed (see section 5.4.2);
- Ask the employer when workers and handlers receive pesticide safety training;
- Ask where the training was conducted. The training location must be free of distractions during training. EPA plans to develop interpretive guidance on what situations can be considered to be free of distractions.

The inspector may also at this time:

- Ask what the employer does if a worker or handler requests training records. Training records must be provided to an employee on request by the employee. (§170.401(d)(2))

5.5.1.3 Decontamination and Eye Flush Supplies

The applicable regulations are:

Worker Decontamination (§170.411) — An agricultural employer must provide decontamination supplies for routine washing and emergency decontamination for workers. The decontamination supplies must be reasonably accessible (within ¼ mile or at the nearest vehicular access) and located together and outside of any treated area or area under a REI.

The water must be of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination, unless equipped with properly functioning valves or

other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

Decontamination supplies must include:

- Water (1 gallon per worker at the start of the work period);
- Soap (no hand sanitizing gels/liquids, no wet towelettes).
- Single-use dry towels.

Decontamination supplies must be provided:

- If pesticides have a REI less than or equal to 4 hours, supplies must be provided for at least 7 days after the end of the REI;
- If pesticides have a REI greater than 4 hours, supplies must be provided for 30 days after the end of the REI.

An inspector should:

- Ask the employer and later verify, where decontamination supplies are located;
- Evaluate the quality (look for the presence of any color, debris, cloudiness) and temperature of the decontamination water, if practical, during the site visit.
- Ask the employer about and later verify the contents of the decontamination supplies;
- Ask the employer if and when the water supply is replenished during the work period to ensure it is sufficient to meet the needs of the workers.
- Ask the employer when decontamination supplies are provided. If possible, verify during site visit.

Handler Decontamination (§170.509) — A handler employer must provide decontamination and eye flushing supplies during any handling activity for removing pesticides and pesticide residues.

Decontamination supplies must be provided as follows:

- The decontamination supplies must be reasonably accessible (within ¼ mile or at the nearest vehicular access) and located together and outside of any treated area or area under a REI;
- Decontamination supplies must be provided at all mixing sites;
- Decontamination supplies must be outside treated areas or areas under a REI unless supplies are contained within a pesticide protected closed container;
- For pilots, the decontamination supplies must be in the aircraft or at the aircraft loading site.

Decontamination supplies for handlers must include:

- Water (3 or more gallons per handler at start of the work period);
- Soap (no hand sanitizing gels/liquids, no wet towelettes);
- Single-use dry towels;
- Clean change of clothing, such as coveralls.

The employer must ensure at least one pint of water is immediately available to applicators using pesticides requiring protective eyewear (i.e., within a few seconds or within a few steps).

At a mix/load site for pesticides requiring protective eyewear or with a closed system operating under pressure, at least one eye flush system must be immediately available. The eye flush system must be capable of delivering gently running water at a rate of at least 0.4 gallons per minute for 15 minutes or be 6 or more gallons of water in containers suitable for providing a gentle eye flush for about 15 minutes. If there is more than one handler, only one eye flush station is required per mix/load site.

An inspector should:

- Ask where routine decontamination supplies for handlers are located and verify later, if possible;
- Ask what decontamination supplies for handlers are provided and verify later, if possible. Ask if and when water supplies are replenished to ensure a sufficient supply to meet handler needs during the work period;
- Ask if the establishment uses pesticides that require protective eyewear. If so:
 - Ask how the employer ensures at least one pint of water is immediately available to applicators using pesticides requiring protective eyewear;
 - Ask if there is an eye flush system at the mix/load sites where pesticides that require protective eyewear are used (or a closed system under pressure is used), and verify later, if possible.

If the inspector has reason to believe the eye flush system may not be operational, (e.g., spigots are heavily rusted) the **inspector should** ask when it was last used or tested.

- If necessary, the inspector can test the eye flush system to see if it is operational; to ensure water actually flows at a reasonable flow and appears to be of sufficient quality.
- However, **before testing the eye flush system, the inspector should ensure that any water removed during testing can be replaced quickly.**

5.5.1.4 Emergency Assistance

The applicable regulations are:

Emergency Assistance (§§170.309(f) and 170.313(k)) -- Once the employer is aware that workers or handlers may have been exposed to pesticides, the agricultural employer or commercial pesticide handler employer must provide:

- Transportation of the worker or handler to a medical care facility;
- Exposure information, including the product name, EPA registration number, active ingredient(s), SDS, the pesticide use, and circumstances of the exposure to medical personnel.

The inspector should:

- Ask the worker or handler employer what is done to respond to pesticide-related illnesses or exposures;
- Inquire if any workers or handlers have been exposed to a pesticide recently. If so, ask how the employer responded.

5.5.1.5 Employee Refusal

Although the WPS identifies the agricultural employer as responsible for ensuring WPS protections, some workers and handlers may refuse to comply with these requirements (e.g., wearing PPE). The inspector may observe workers or handlers who are not following WPS protections despite the availability of the protections (e.g., not wearing the required PPE although it is available). In these cases, the inspector should ask why the worker or handler is not following the protections, document the handler's or worker's response and follow up with the employer.

The inspector also may learn about these situations through a complaint or injury investigation. In any of these cases the inspector should identify the employer's actions/responses to the employee refusals and whether the employer made any good faith efforts to comply (e.g., holding additional training sessions for handlers/workers who did not attend previously).

5.5.2 Requirements that Only Apply to Agricultural Employers of Workers and Agricultural Employers of Handlers

5.5.2.1 Display of Pesticide Safety, Application and Hazard Information and Providing Establishment Specific Information

The applicable regulations are:

Establishment-Specific Information (§§170.403 and 170.503) – Before any worker or handler performs any activity in a treated area or an agricultural establishment where in the last 30 days a pesticide product has been used, or an REI has been in effect, the employer must ensure workers and handlers are informed in a manner the workers and handlers can understand:

- location of pesticide safety information;
- location of pesticide application and hazard information; and
- location of decontamination supplies.

The inspector should:

- Ask the employer when they inform workers and handlers about the location of pesticide safety information, pesticide application and hazard information, and the location of decontamination supplies.

Pesticide Safety Information (§170.311(a)) —When workers and handlers are on-site at an agricultural establishment and within 30 days of the end of a REI, the agricultural employer must display, in accordance with this section, pesticide safety information. After January 1, 2018, the content must include all 10 points at (§170.311(a)(3)). See chart below.

Pesticide Safety Information Requirements

Content required on or before Jan. 1, 2018	Content required after Jan. 1, 2018
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 PPE, or drifting from nearby applications. (§170.311(a)(2)(i))	No change in content. (§170.311(a)(3)(i))
Wash before eating, drinking, using chewing gum or tobacco, or using the toilet. (§170.311(a)(2)(ii))	No change in content. (§170.311(a)(3)(ii))
Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf. (§170.311(a)(2)(iii))	No change in content. (§170.311(a)(3)(iii))
Wash or shower with soap and water, shampoo hair, and put on clean clothes after work. (§170.311(a)(2)(iv))	No change in content. (§170.311(a)(3)(iv))
Wash work clothing separately from other clothes before wearing them again. (§170.311(a)(2)(v))	No change in content. (§170.311(a)(3)(v))
Follow directions about keeping out of treated or restricted areas. (§170.311(a)(2)(vii))	No change in content. ((§170.311(a)(3)(vii))
Name, address and phone number of a nearby operating medical care facility capable of providing emergency medical treatment (identified as emergency medical contact information). Not acceptable to only list 911. (§170.311(a)(2)(viii)) Information must be updated within 24 hours of receiving notice of a change to the information. (§170.311(a)(4))	No change in content. (§170.311(a)(3)(ix))
	New - Name, address and phone number of the State or Tribal pesticide regulatory agency. (§170.311(a)(3)(x))

Pesticide Safety Information Requirements (continued)	
Content required on or before Jan. 1, 2018	Content required after Jan. 1, 2018
Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes. (§170.311(a)(2)(vi))	Revised – 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, shower with soap and water, shampoo hair, and change into clean clothes. (§170.311(a)(3)(vi))
There are Federal rules to protect workers and handlers, including a requirement for safety training. (§170.311(a)(2)(ix))	Not required.
	New – Instructions to employees to seek medical attention as soon as possible if they believe they have been poisoned, injured or made ill by pesticides. (§170.311(a)(3)(viii))

- The information must be located:
 - Where employees pass or congregate and where it can be readily seen and read;
 - Where decontamination supplies are located at permanent sites;
 - Where a toilet, and handwashing and drinking water supplies are provided to meet the OSHA field sanitation requirements for 11 or more workers. 29 CFR 1928.110.
- The information must be understandable, accessible and legible:
 - Must allow free access to the information at all times during work hours;
 - Must be legible at all times;
 - Must be conveyed in a manner that workers and handlers can understand.

The inspector should:

- Ask what languages are spoken by the workers and handlers and how information is provided to ensure it is understood;
- Ask the agricultural employer when and where pesticide safety information is provided and how employees have access to the information.

If possible during the site visit, verify if there is either an EPA-developed poster or pesticide safety information that includes the correct content.

Pesticide Application and Hazard Information

(§170.311(b)) — An agricultural employer shall display the required pesticide application and hazard information about pesticides applied on the establishment until workers or handlers are no longer on the establishment or until at least 30 days after the end of the last applicable REI whichever is earlier. In addition, an agricultural employer must retain the pesticide application and hazard information required to be displayed in records on the establishment for two years after the end of the last applicable REI.

The pesticide application and hazard information must include:

- A copy of the OSHA Safety Data Sheet (SDS) for each pesticide applied within the last 30 days or that had an REI in effect in the last 30 days. The SDS needs to be a current version;
- Name, EPA registration number, active ingredient and REI of each product;
- Crop or site treated;
- Location/description of the treated area(s);
- Date(s) and times application started and ended;
- It must be posted no later than 24 hours after the end of the application and before any workers enter the treated area; (§170.311(b)(5) and §170.309(l))
- The display needs to be at a place that workers and handlers are likely to pass by or congregate and where it can be readily seen and read, and it must remain legible; (§170.311(b)(2) and (4))
- Workers and handlers must be allowed access to the information at all times during work hours. (§170.311(b)(3))

An inspector should:

- Ask what pesticide application and hazard information is displayed and verify later if posted;
- If posted, check during the site visit to see if the application display can be readily seen and read and is located where workers and handlers are likely to see it;
- Ask if it is accessible at all times during normal work hours;
- Ask when the application information is posted;
- Ask when the display is removed;

Electronic Information Display

An agricultural employer may provide required pesticide safety, pesticide application and hazard information through electronic media only if it meets all the requirements of 170.311. The employer would need to provide each worker and handler with a device or free access to a device that contains all the required information in an understandable format and that all workers and handlers know how to access the information. These situations need to be assessed on a case-by-case basis.

- If not done earlier during the records review, examine the application information and SDSs to ensure retention for 2 years. (A total of 2 years of records will not be required until 2019, i.e., 2 years after the requirement to keep records is effective.)

Access to Pesticide Application and Hazard Information by a Worker or Handler (§170.311(b)(7))

– Upon request, the agricultural employer must provide to a worker or handler the pesticide application information and SDSs that was required to be displayed during the period that worker or handler was employed on the establishment. The information must be provided within 15 days of the request. The request from the worker or handler may be either oral or in writing.

Repeated Information Requests

Whenever a record has been previously provided without cost, the agricultural employer may charge a reasonable cost for additional copies.
(§170.311(b)(7)(ii))

The inspector should:

- Ask if pesticide application and hazard information has been requested by employees. If so, ask how quickly the employer provided the information.

Access to Pesticide Application and Hazard Information by Treating Medical Personnel

(§170.311(b)(8) – The agricultural employer must promptly provide a copy of, or access to, pesticide application and hazard information applicable to a worker’s or handler’s time of employment on the establishment if requested (orally or in writing) by treating medical personnel.

The inspector should:

- Ask if there have been requests from medical personnel. If yes, ask if all information requested was provided to treating medical personnel promptly.

Limited Role of the Designated Representative under WPS

170.311(b)(9)

Under the WPS, the role of the designated representative is limited to requesting, on behalf of a worker or handler, a copy of, or access to:

- pesticide application records; and
- hazard information posted during the period of that worker’s or handler’s employment.

Access to Pesticide Application and Hazard Information by

a Designated Representative (§170.311(b)(9)) – The agricultural employer must provide to a worker’s or handler’s designated representative, the pesticide application and hazard information that was required to be displayed during the period that worker or handler was employed on the establishment. The information must be provided within 15 days of the request. A request by a designated representative must be in writing and must contain the following:

- Name of worker or handler being represented;

- Description of specific information being requested (including dates of employment, and type of work conducted);
- Written statement designating the representative (including: printed name of worker or handler and signature; printed name of designated representative, signature and contact information; and date of designation);

The inspector should:

- Ask if pesticide application and hazard information has been requested by designated representatives. If so, ask how quickly the employer provided the information requested.

5.5.3 Restrictions for Agricultural Employers during Applications

The applicable regulations are:

Restrictions during Outdoor Pesticide Applications (Application Exclusion Zone (AEZ))

(§170.405(a)) – An agricultural employer must not allow or direct any worker or other person to enter or remain in the AEZ within the boundary of the establishment.

- AEZ is 100 feet from the dispersion points of the application equipment horizontally in all directions if applied aurally, as air blast, as a spray of extremely fine, very fine or fine spray quality (ASABE S-572.1) or as a fumigant, smoke, mist, or fog. (Note, EPA intends to develop an interpretive policy statement to clarify the definition of “air blast” sprayers as it applies to the AEZ.)
- AEZ is 25 feet from the dispersion points of the application equipment horizontally in all directions if applied from a height greater than 12 inches above the planting medium and spray quality of medium or larger (ASABE S-572.1).

Application Exclusion Zone (AEZ)

More information on the AEZ can be found in Appendix E: The Interpretive Policy on the AEZ.

See section 5.5.6.2 for Handler responsibilities regarding the AEZ.

More information about the AEZ can be found in Appendix E which includes EPA’s Interpretive Policy Statement regarding the AEZ, questions and answers and a diagram of an AEZ.

The agricultural employer has two responsibilities related to the pesticide applications and the AEZ requirements:

- During any WPS-covered pesticide application, the agricultural employer must keep workers and all other persons (other than appropriately trained and equipped handlers involved in the application) out of the treated area and the AEZ within the boundary of the agricultural establishment. This includes people occupying migrant labor camps or other housing or buildings that are located on the agricultural establishment;
- The agricultural employer may not allow a pesticide to be applied while any worker or other person on the establishment is in the treated area or within the AEZ.

Note that if the agricultural employer is also the handler making the pesticide application, the employer must suspend a pesticide application if any worker or other person is within the AEZ beyond the boundary of the agricultural establishment.

According to EPA's Interpretive Policy, the applicator may resume the application only after taking measures to ensure that workers and other persons who are in the AEZ but located off the establishment, will not be contacted by the pesticide application either directly or through drift. It is the agricultural employer's responsibility to ensure workers or other persons not involved in the application are not in the AEZ on the establishment.

The inspector should:

- Observe applications made during the inspection if possible. Based on the pesticide label instructions, method of application and spray quality, if known, determine the size of the AEZ. If workers or other people appear to be in the treated area or AEZ, notify the employer immediately;
- Ask the employer what instructions have been given to handlers about what to do if there are people close to the application equipment, in the AEZ;
- Ask how the agricultural employer keeps workers or other people out of the AEZ within the establishment;
- Ask the employer if there are any easements on the establishment and if the easements are ever inside the AEZ. Ask how those situations are handled and what actions the employer takes to ensure persons on the easement are not contacted directly or by spray drift. (Note, EPA intends to develop an interpretive policy statement on how the AEZ applies to easements.)

Note on Nozzle Colors

The color of spray nozzles do not necessarily correspond to ASABE spray quality charts where a color corresponds to each droplet category: purple-extra fine, red-very fine, orange-fine, yellow-medium, blue-coarse, green-very coarse, white-extremely coarse, and black-ultra coarse.

Restrictions During Enclosed Space Pesticide Applications (§170.405(b)) – During any enclosed space application, an agricultural employer must not allow any worker or other person to enter or remain in the area specified in column B of §170.405(b)(4) until the time specified in column C has expired. See Appendix D for Table on Entry Restrictions During Enclosed Space Production Pesticide Applications.

The inspector should:

- Ask how the agricultural employer keeps workers and other people out of the relevant parts of the enclosed space during pesticide applications;
- Determine the type of ventilation used on the establishment;

- Ask how the agricultural employer determines when the ventilation criteria have been met (i.e., is inhalation exposure level determined, are air exchanges measured, or are mechanical or passive ventilation systems used).

5.5.4 Treated Areas Information from the Agricultural Employer to the Commercial Handler Employer

The applicable regulations are:

Treated Areas Information from Agricultural Employer to the Commercial Handler Employer (§170.309(k)) -- The client agricultural employer must provide information to the commercial handler about areas (location and description) on the establishment that have been previously treated, the REI in effect, and any label restrictions for any areas that the handler may be in or within ¼ mile. The commercial pesticide handler employer must provide certain information to the agricultural employer before the application. See section 5.5.6.8.

The inspector should:

- Ask if the agricultural employer hires commercial pesticide handlers to apply pesticides on the establishment. If so:
 - Ask how the agricultural employer provides information on treated areas to the handler employer and who provides the information;
 - Ask the agricultural employer what information is provided.

5.5.5 Requirements that Only Apply to Agricultural Employers of Workers

5.5.5.1 Notice of Application

The applicable regulations are:

Notification to Workers of Pesticide Applications (§170.409) — Agricultural employers must notify workers of all entry restrictions in accordance with this section. No notification is needed if from the application start to the expiration of the REI, no worker will enter or travel within ¼ mile of the treated area for outdoor production or no worker will enter any part of the enclosed space for enclosed space production.

For outdoor and enclosed space applications:

- If the label requires both types of notification, the employer must post and orally notify workers.

Otherwise, for outdoor applications:

- If product REI is 48 hours or less, then employer may either post or orally notify workers;
- If product REI more than 48 hours, then employer must post to notify workers;

Otherwise, for enclosed space applications:

- If product REI is 4 hours or less, then the employer may post or orally notify workers;
- If product REI is greater than 4 hours, then employer must post to notify workers;

The warning sign must meet the following restrictions:

- Standard Sign is 14 X 16 inches; letters 1 -inch height:
 - Outdoor posting at all visible points of entry to treated area (access road, footpath, border within 100 feet of worker housing), or corners of treated area;
 - Indoor posting at all visible points of entry to the structure/space, or at corners of treated area, or at entry points to the treated subsection within a larger space.
- Medium-sized Sign Letters 7/8 inches height; red circle 3 inches diameter:
 - Post 50 feet apart around the treated area, and at all locations as specified for the standard outdoor/indoor sign above.
- Smallest Sign Letters 7/16 inches height; red circle 1 ½ inches diameter:
 - Post minimum 25 feet apart around treated area, and at all locations as specified for the standard outdoor/indoor sign above.

Electronic Notification

Agricultural employers may notify workers of pesticide applications electronically, for example, using text messaging, in addition to other required methods, but not instead of those methods.

Warning signs must meet the following required content:

- Stern face and raised hand in red circle, DANGER PESTICIDES (PELIGRO PESTICIDAS), KEEP OUT (NO ENTRE); Spanish language may be replaced with another language read by most workers.

Warning signs must be:

- Posted before, but no more than 24 hours before the application;
- Removed or covered within 3 days after the end of the application or any REI expires, whichever is later.

Exception: signs may remain posted more than 3 days after the REI as long as workers are kept out of the treated area and any workers that may come within ¼ mile of the treated area know not to enter the treated area while signs are posted.

Oral warning must be provided:

- Before the application begins;
- At the start of the worker's work period if workers arrive during the application or before the end of the REI;
- And must include:
 - Location and description of the treated areas(s);

- Dates and times of restricted entry;
- Instructions not to enter the treated area(s) or application exclusion zone.

An inspector should:

- Ask what notification was given for recent (at a minimum, the last three if possible) WPS pesticide applications. Verify with label information;
- Ask when the employer gives oral notification and when posted notification is used for applications in outdoor spaces;
- Ask when the employer gives oral notification and when posted notification is used for applications in enclosed spaces;
- Inquire how oral warnings are communicated to non-English speaking workers;
- Ask what information is provided through oral warnings;
 - During site visit, examine the warning sign if possible, to assess if it meets the WPS size, content and location requirements;
 - Ask how the employer assures that workers do not enter treated areas while the signs are posted;
- Ask when warning signs are posted and when they are removed;
- Look for posted warning signs on the establishment and inquire about the specific pesticide for which that sign has been posted;
- Compare the pesticide product label and the time of application to determine if the sign should be posted at the time of the inspection or if it should be removed;
- Ask when and how oral warnings are given. §170.409(c))

5.5.5.2 Restrictions to Worker Entry after Pesticide Applications

The applicable regulations are:

Worker Entry Restrictions After Pesticide Applications (§170.407(a) and (b) and §170.309(l)) – After the application of any pesticide to an area of **outdoor production**, the agricultural employer must not allow or direct any worker to enter or to remain in the treated area before the REI has expired, all warning signs have been removed or covered, and the pesticide application information and SDS have been displayed, except for permitted early-entry activities.

After the application of any pesticide to an area of **enclosed space production**, the agricultural employer must not allow or direct any worker to enter or to remain in the areas specified in Column D of the Table in §170.405(b)(4) (see Appendix D for Table) before the REI has expired, all warning signs have been removed or covered, and the pesticide application information and SDS have been displayed, except for permitted early-entry activities.

For outdoor applications the inspector should:

- Ask how the agricultural employer assures that no worker enters the treated area before allowed.

For enclosed space applications the inspector should:

- Ask how the agricultural employer assures that no worker enters the enclosed space before allowed.

Applicable REI

When two or more pesticides are applied to a treated area at the same time, the applicable REI is the longest. (170.407(c))

5.5.5.3 Early Entry

The applicable regulations are:

Exceptions for Entry by Workers During the REI (§170.603) -- An agricultural employer may direct workers to enter treated areas under an REI to perform certain activities as listed below and in conformance with special protections provided to the workers.

- Worker No Contact – early entry is allowed if:
 - Workers will have no contact with any pesticide treated areas (soil, water, plants), even with PPE; and
 - Entry is not allowed until labeled inhalation exposure is met or ventilation criteria at §170.405(b)(3) is met.
- Worker Short-term Activities – early entry is allowed if:
 - No hand labor is performed;
 - The time in treated area does not exceed 1 hour in every 24 hours;
 - Entry is not allowed until 4 hours after application; and
 - Entry is not allowed until labeled inhalation exposure is met or ventilation criteria at §170.405(b)(3) are met.
- Agricultural Emergency – Entry under the REI by a worker is allowed, only when:
 - The agricultural employer could not have anticipated the circumstances for the emergency and has no control but requires entry under REI to prevent/mitigate substantial economic loss. Losses due to mismanagement cannot be included, and;
 - The state department of agriculture or other agency responsible for pesticide enforcement declared the agricultural emergency;
 - If early entry is allowed under an agricultural emergency, the agricultural employer must meet the follow requirements:
 - Entry is not allowed until 4 hours after application; and
 - Entry not allowed until labeled inhalation exposure is met or ventilation criteria at §170.405(b)(3) is met.
 - If the label requires double notification, a worker can only work in treated area for maximum of 4 hours in any 24 hours.
- Worker Limited Contact and Irrigation – Workers may enter treated areas under the REI for limited contact or irrigation activities, provided that:
 - Without this exception, there would be substantial economic loss;
 - There are no alternative tasks to prevent the loss.

- The need for the work was not anticipated (except for irrigation);
- No hand labor was performed;
- Worker will have no contact with any pesticide treated areas (soil, water, plants), other than minimal to feet, lower legs, hands, and forearms;
- The time in treated area does not exceed 8 hours in a 24-hour period;
- Entry is not allowed until 4 hours after application;
- Entry not allowed until labeled inhalation exposure is met or ventilation criteria at §170.405(b)(3) are met;
- The pesticide's labeling DOES NOT require double notification.

Inspectors should:

- Ask if workers are ever directed to enter treated areas under an REI.
- If so, ask what justification was there to allow the early entry. Depending on the response, the inspector should ask if the conditions above were met as appropriate.

Protection of Workers in a Treated Area during the REI (§170.605) - Early entry workers must be provided the following protections:

- The agricultural employer must provide the following required information before the early entry:
 - Location of the early entry area for work activities;
 - Pesticides applied;
 - Dates and times that REI begins and ends;
 - The specific early entry exception taken, and tasks to be performed;
 - If contact with treated surfaces is permitted;
 - Length of time the worker is allowed to be in the treated area;
 - Early entry PPE required;
 - Specific location on the establishment of the central posting and decontamination supplies.
- The employer must ensure the following before workers enter a treated area:
 - Workers have read the applicable pesticide labeling or are informed of labeling requirements and statements related to human hazards or precautions, first aid, and user safety.
- The employer must ensure:
 - Workers are provided with the appropriate PPE required on the product labeling for early entry, must ensure workers use the PPE as intended, and workers follow any other label-specified requirements;
 - The early entry PPE is maintained properly;
 - Measures to prevent heat stress are implemented, and the workers are instructed in the prevention, recognition, and first aid treatment for heat stress;
 - Workers are instructed on the proper use, removal, cleaning, maintenance, and disposal of the early entry PPE;
 - Workers do not take their pesticide contaminated PPE home;

- Decontamination supplies are provided at a location which is not within the area under the REI;
- Eye-flush water (at least 1 pint) is immediately available in a portable container for each worker when the label requires protective eyewear;
- Decontamination supplies (soap, single-use towels, and at least 3 gallons of water per worker) are available where they remove the early entry PPE.

The inspector should:

- Ask the employer if workers were directed to enter treated areas during the REI during the recent pesticide applications. If so, and if not already discussed, ask the employer if any early entry workers are under 18 years old, or were under 18 after January 2, 2017;
- Ask the employer what protections were provided to the early entry workers.

5.5.6 Requirements That Only Apply to Agricultural Employers of Handlers and Commercial Pesticide Handler Employers

5.5.6.1 Safe Operation of Equipment

The applicable regulations are:

Training on Pesticide Equipment (170.309(i) and 170.313(f)) -- Pesticide handler employers must ensure that before any handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

The inspector should:

- Ask the handler employer if and when the handlers receive training on the safe use of the equipment.

Pesticide Equipment Inspection and Repair (170.309(j) and 170.313(g)) -- Pesticide handler employers must ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or replaced.

The inspector should:

- Ask the handler employer how often the equipment is checked to ensure pesticide equipment integrity and safety.

5.5.6.2 Restrictions for Handlers and Handler Employers during Applications

The applicable regulations are:

Restrictions During Applications to Protect Employees and Other Persons (§170.505) – The handler employer and the handler must ensure that no pesticide is applied so as to contact,

directly or through drift, any worker or other person, other than an appropriately trained and equipped handler involved in the application.

The handler performing the application must immediately suspend a pesticide application if any worker or other person, other than an appropriately trained and equipped handler involved in the application, is in the application exclusion zone (AEZ). (This requirement is effective January 2, 2018.)

- AEZ is 100 feet from the dispersion points of the application equipment horizontally in all directions if applied aerially, as air blast, as a spray of extremely fine, very fine or fine spray quality (ASABE S-572.1) or as a fumigant, smoke, mist, or fog. (Note, EPA intends to develop an interpretive policy statement to clarify the definition of “air blast” sprayers as it applies to the AEZ.)
- AEZ is 25 feet from the dispersion points of the application equipment horizontally in all directions if applied from a height greater than 12 inches above the planting medium and spray quality of medium or larger (ASABE S-572.1).

Effective Dates for the AEZ

The effective date for agricultural employers is **January 1, 2017**. After that date, agricultural employers must keep workers and all other persons (other than appropriately trained and equipped handlers involved in the application) out of the treated area and the AEZ within the boundary of the establishment. See 5.5.3.

The effective date for handlers is **January 2, 2018**. After this date, handlers must immediately suspend a pesticide application if any worker or other person other than an appropriately trained and equipped handler involved in the application, is in the AEZ. §170.505

More information about the AEZ can be found in section 5.5.3 and Appendix E which includes EPA’s Interpretive Policy regarding the AEZ, questions and answers and a diagram of an AEZ.

According to EPA’s Interpretive Policy, the handler may resume the application only after taking measures to ensure that workers and other persons who are in the AEZ but located off the establishment, will not be contacted by the pesticide application either directly or through drift.

Examples of such measures include:

- Assessing the wind and other weather conditions to confirm they will prevent workers or other persons from being contacted by the pesticide either directly or through drift;
- Adjusting the application method or employing drift reduction measures in such a way to ensure that resuming the application will not result in workers or other persons off the establishment being contacted by the pesticide;

- Asking the workers or other persons to move out of the AEZ until the application is complete; or
- Adjusting the treated area or the path of the application equipment away from the workers or other persons so they would not be in the AEZ.

Note, it is the agricultural employer's responsibility to ensure no workers or other people are in the AEZ *on the establishment*. If a handler were to resume an application while workers, or other persons *on the establishment* are still within the AEZ, that would give rise to a violation of §170.405 (i.e., a violation by the agricultural employer).

The inspector should:

- Observe applications made during the inspection, if possible. Based on the pesticide label instructions, method of application and spray quality, if known, determine the size of the AEZ. If workers or other people appear to be in the treated area or AEZ, notify the employer immediately;
- Ask the employer what handlers have been instructed to do if there are workers or people in the AEZ;
- Ask what the handler employer has instructed the handler to do to assess the situation, and make necessary changes before resuming the application to ensure pesticides will not contact people or workers.

5.5.6.3 Handler Knowledge of Labeling and Application-Specific Information

The applicable regulations are:

Ensure Handlers Understand Labels and Application-Specific Information (§170.503(a)) – The handler employer must ensure that before any handler performs any handler activity involving a pesticide product, the handler either has read the portions of the labeling applicable to the safe use of the pesticide or has been informed in a manner the handler can understand of all labeling requirements and use directions.

The inspector should:

- Ask how and when the handler employer provides the pesticide label to handlers, or the handlers read or are informed of label requirements and use directions.

5.5.6.4 Applications Involving Highly Toxic Pesticides

The applicable regulations are:

Monitoring Handlers Applying Highly Toxic Pesticides (§170.505(c)) – The handler employer must ensure handlers are monitored visually or by voice every 2 hours during handling of skull and crossbones labeled products.

The inspector should:

- Ask the handler employer if highly toxic pesticides are used. If so, ask how the application of products with the skull and crossbones symbol are managed and how the employer ensures the safety of the handler.

5.5.6.5 Fumigant Applications in Enclosed Space Production

The applicable regulations are:

Fumigant Applications in Enclosed Space Production (§170.505(d)) – The handler employer must ensure handlers applying a fumigant in an enclosed space are monitored continually visually or by voice by another handler outside who uses and has immediate access to labeled PPE for a rescue.

The inspector should:

- Ask the handler employer if fumigants are used in enclosed space production. If so, ask what safety precautions are taken.

5.5.6.6 Personal Protective Equipment (PPE) for Handlers

The applicable regulations are:

Handler Responsibilities (§170.507(a)) -- Handlers must use the clothing and personal protective equipment required by the product labeling, except when under an exception (§170.607).

The inspector should:

- Ask how the employer ensures that a handler follows the labeled PPE requirements.

PPE Equipment Provided by Handler Employer (§170.507(b)) -- The handler employer must provide to the handler the label required PPE, in clean and operating condition. Shirts, pants, shoes, and socks are not considered PPE, but may still be required by the labeling.

The inspector should:

- Ask how the handler employer ensures the correct PPE is available and in operating condition when needed for applications;
- If not conducted during an earlier record review, examine the handler employer's respirator fit testing, medical evaluation and training records (handlers must be fit tested, trained and medically evaluated before they use any respirator). See section 5.4.3.

Use of PPE (§170.507(c)) -- Handler employers must ensure that PPE is used correctly, has been inspected before each day of use, and damaged equipment is repaired or replaced.

The inspector should:

- Ask how the employer ensures that the PPE is inspected before use, damaged PPE is replaced, contaminated PPE is made unusable and the PPE is used correctly.

Cleaning and Maintenance of PPE (§170.507(d)) -- Handler employers must ensure that all PPE is cleaned according to manufacturer's instructions or pesticide product labeling before each day of

reuse (or if none, washed in detergent and hot water). In addition, handler employers must ensure:

- Contaminated PPE is kept separate from cleaned PPE, cleaned separately from other clothing, and dried thoroughly before storage;
- Clean PPE must be kept separate from pesticide contaminated areas and personal clothing;
- Handlers must have a place away from pesticide storage or pesticide use areas to:
 - Store personal clothing;
 - Put on and remove PPE.
- Particulate filtering respirators must be replaced after 8 hours of use if not earlier;
- Particulate filtering respirators also must be replaced when:
 - Breathing resistance is excessive;
 - The filter has damage or tears;
 - Required by manufacturer's directions or the label.
- Gas or vapor respirators must have canisters or cartridges replaced at the end of 8 hours of use if not earlier. Gas or vapor removing respirator canisters or cartridges also must be replaced when:
 - There is the first indication of odor, taste, or irritation;
 - Maximum use time is reached as per OSHA 29 CFR §1910.134(d)(3)(iii)(B)(2) (see box);
 - Breathing resistance is excessive;
 - Required by manufacturer's directions or the label.
- The following information must be provided to the person who cleans/launders the PPE:
 - PPE may be contaminated;
 - Correct way to clean the PPE and how to protect themselves;
 - Proper decontamination methods after handling the PPE.
- The employer must ensure employees do not take PPE home.

OSHA Maximum Use Time

OSHA 29 CFR §1910.134(d)(3)(iii)(B)(2) states, "If there is no ESLI [end-of-service-life-indicator] appropriate for conditions in the employer's workplace, the employer implements a change schedule for canisters and cartridges that is based on objective information or data that will ensure that canisters and cartridges are changed before the end of their service life. The employer shall describe in the respirator program the information and data relied upon and the basis for the canister and cartridge change schedule and the basis for reliance on the data."

The inspector should:

- Ask how the employer ensures PPE is cleaned, stored and maintained properly;
- Ask how often the PPE is cleaned, how it is cleaned and how and where it is stored;
- Ask to see where PPE is stored and check the following:
 - Is visibly contaminated PPE stored with clean PPE or clean clothing?
- If PPE is being donned, doffed or cleaned during the inspection, check the following if possible:

- Are workers or handlers donning PPE that is damaged with holes or tears?
- Are workers or handlers donning PPE in an area away from pesticide use or storage?
- Is PPE being washed according to manufacturer's instructions or pesticide labeling or if none, with detergent and hot water?
- Is clean PPE being stored or donned while still wet?
- Is contaminated PPE being kept separate from clean PPE and other clothing?
- Is contaminated PPE being washed separately from other clothing or laundry?
- Are workers or handlers taking contaminated PPE with them when leaving the establishment?
- Ask the handler employer if particulate filtering facepiece or gas- or vapor-removing respirators are used. If so, ask how the employer knows when to replace particulate filtering facepiece respirators or replace canisters or cartridges in gas- or vapor-removing respirators. (Records are not required.)

Handler Heat Stress (§170.507(e)) -- Whenever PPE is required during a handler activity, the handler employer must take measures to prevent heat-related illnesses.

- Ask how the employer prevents heat stress.

5.5.6.7 PPE Exceptions

The applicable regulations are:

PPE Exceptions and Substitutions (§170.607(a-c)) -- A chemical-resistant suit may be substituted for coveralls or a chemical-resistant apron. Leather boots may be worn in place of chemical-resistant footwear only in rough terrain. Leather gloves may be worn over chemical-resistant glove liners only when working with plants with thorns.

The inspector should:

- Inquire if any labeled PPE substitutions are made by handlers and what the substitutions are.

Closed System PPE Substitutions (§170.607(d)) – When pesticides are being mixed or loaded using a closed system that meets all of the requirements in §170.607(d)(2) and the handler employer meets the requirements of §170.607(d)(3) specific exceptions to label specified PPE are permitted. If the products are not contained, the system cannot qualify for PPE substitutions. Water soluble packaging that is compromised is no longer considered a closed system, and then full labeled PPE must be worn.

The following conditions must be met to apply the closed system PPE exceptions.

- The closed system removes the pesticide from its original container and transfers the pesticide product through connecting hoses, pipes and coupling that are sufficiently tight to prevent exposure of handlers to the product, except for the negligible escape associated with normal operation of the system or the pesticide is loaded in intact, sealed water soluble packaging;

- The closed system operating instructions are available at the mix/load site;
- The operating instructions are clearly legible and include procedures for use, safe removal of any probe, maintenance, cleaning, repair, known restrictions/limits relating to the system such as incompatible pesticides or unsuitable containers, limits on the ability to measure a pesticide, and procedures dealing with partially-filled containers;
- Handlers must be trained and use the system according to the written instructions;
- The closed system must be cleaned and maintained according to the written instructions;
- All label specified PPE must be immediately available;
- Protective eyewear must be worn if the closed system operates under pressure.

When the above conditions are met, the following exceptions to PPE are permitted:

- Handlers using a closed system to mix/load pesticides with signal words “DANGER” or “WARNING” may substitute a long-sleeved shirt, long pants, shoes and socks, chemical-resistant apron, protective eyewear, and protective gloves for any labeled PPE;
- Handlers using a closed system to mix/load pesticides with signal word other than above may substitute a long-sleeved shirt, long pants, shoes and socks, and protective eyewear, and for any labeled PPE.

The inspector should:

- Inquire if closed systems are used by handlers for any mixing/loading of pesticides and if they operate under pressure. If so, ask what PPE is used;
- Ask if and when handlers are trained in the use of the closed system;
- Ask the handler employer what, if any, PPE substitutions the handlers make;
- During the site visit, if substitute PPE is being used, see if written operating instructions for the closed system are available at the mix/load site and check that all labeled PPE is available immediately to a handler in an emergency;

Enclosed Cab PPE Exceptions (§170.607(e)) -- If a handler applies a pesticide from inside a vehicle’s enclosed cab, and if the conditions listed below (§170.607(e)(2)) are met, the following exceptions to the label specified PPE are permitted. However, all label required PPE must still be immediately available and stored in a sealed container in the vehicle and handlers must wear full PPE required by the label when they exit the vehicle in the treated area, and must remove PPE before reentering the cab.

- Handlers may substitute long-sleeved shirt, long pants, shoes and socks for required skin and eye protection.
- A particulate filtering respirator (NIOSH TC-84A) is not required if the enclosed cab has a functioning air ventilation system maintained per manufacturer instructions. (Note older labels may refer to dust/mist filtering respirators instead of the current terminology using particulate filtering respirator.) Other required respirators must be worn inside an enclosed cab.

The inspector should:

- Inquire if the application equipment includes enclosed cabs. If so, ask what PPE is used when handlers are using enclosed cabs;
- Ask the handler employer if the handlers ever exit the vehicle within a treated area during applications or within the REI and what PPE is used.

Aerial Applicator PPE Exceptions (§170.607(f)) -- For aerial applications, substitutions of label specified PPE is permitted under certain conditions:

- For open cockpit (rare), labeled PPE must be worn, except chemical-resistant footwear is not needed; a helmet with a face shield may substitute for headgear or protective eyewear;
- For enclosed cockpit, long-sleeved shirt, long pants, shoes, socks may substitute for labeled PPE;
- Chemical-resistant gloves are optional unless required on the label. If chemical-resistant gloves have been used, they must be stored in an enclosed container to prevent contamination of the cockpit.

The inspector should:

- Ask the handler employer what PPE is used during aerial applications and if any substitute PPE is used;
- Ask the employer where the gloves are kept if used.

Crop Advisors (§170.607(g)) -- Crop advisors may substitute the PPE required on the label for handler activities under certain conditions. Entry into a treated area during the REI using substitute PPE can only be done:

- At least 4-hours post-application;
- When the inhalation exposure level on the label is reached, or ventilation in §170.405(b)(3) is met. See Appendix D for the Table on Entry Production Restrictions During Enclosed Place Pesticide Application;
- The crop advisor or employees are only performing crop advising tasks;
- Crop advisors and employees in a field under the REI may substitute the items below for handler PPE:
 - Early entry PPE;
 - Coveralls, shoes plus socks, chemical-resistant gloves made of any waterproof material, and, if the labeling requires protective eyewear for handlers, eye protection.

The inspector should:

- Ask the crop advisor or crop advisor employer what PPE the crop advisor or his employees wear and if they substitute any items from those required;
- Ask the crop advisor or crop advisor employer under what conditions PPE exceptions are made.

Note, this PPE exception applies to all crop advisors, not just those who are licensed/certified crop advisors under a program acknowledged as appropriate by EPA or a state or tribal agency.

5.5.6.8 Treated Areas Information from the Commercial Handler Employer to the Agricultural Employer

The applicable regulations are:

Commercial Pesticide Handler Employer Duties (170.313(i)) -- Commercial pesticide handler employers must provide the agricultural employer all required information before the application of any pesticide on an agricultural establishment. The commercial handler employer must provide:

- Specific location and description of area(s) to be treated with pesticides;
- Date of application, and start and estimated end times;
- Product name, EPA registration number, and active ingredient;
- Labeled REI;
- Whether posted or oral notification, or both are required by the label;
- Any restrictions or use directions on the pesticide label that must be followed to protect workers, handlers, or other persons.

If there are changes to the location, REI, method of notification, any other restrictions or use directions, or the start time will be earlier than scheduled, the commercial handler employer must inform the agricultural employer of these changes before the application begins.

If there are changes to other information, the commercial handler employer must inform the agricultural employer of the changes within two hours after completing the application, except changes to the end time less than an hour do not have to be reported.

The inspector should:

- Ask the commercial handler employer if there is communication with the agricultural employer before an application, and what information is provided;
- Ask the commercial handler employer how any changes to the application information are relayed to the agricultural employer, and when.

5.5.6.9 Information from the Agricultural Employer to the Commercial Handler Employer

The applicable regulation is:

Agricultural Employer Provides Treated Area Information to Commercial Handler Employers (170.309(k)) -- The client agricultural employer must provide information to the commercial handler employer about areas (location and description) on the establishment that have been previously treated, the REI in effect, and any label restrictions for any areas that the handler may be in or within ¼ mile.

Commercial Pesticide Handler Employer Provides Treated Area to the Handler who Goes to the Agricultural Establishment (170.313(h)) -- Ensure that whenever a handler who is employed by a commercial pesticide handling establishment will be on an agricultural establishment, the

commercial pesticide handler employer provides the handler with information about, or ensures the handler is aware of, the specific location and description of any treated areas where a REI is in effect, and the restrictions on entering those areas.

The inspector should:

- Ask if the agricultural employer provides information on treated areas to commercial handler employers and how this information transfer occurs.

5.6 EMPLOYEE INTERVIEWS

EPA expects all inspectors will attempt to interview workers and handlers present at the time of inspection as part of the WPS procedures. Whenever conducting interviews, the inspector should verify the identity of the interviewee.

During WPS inspections, interviews of an employee complainant or critical witness should be conducted to adequately support any possible enforcement action, unless they are not present and cannot be located, or they refuse to be interviewed. **If there is a communication barrier (either a language barrier or arising from a disability), the inspector should take steps to make communication possible when conducting interviews of employee-complainants or other critical witnesses.** If an interpreter is used, the interpreter should be an impartial party. Alternatively, a co-worker may serve as an interpreter for the complainant or critical witness if the complainant or witness agrees, and this is documented by the inspector.

Inspectors should be aware of potential WPS retaliation concerns. Some employees may be reluctant to be interviewed on the establishment or during work hours if they fear retaliation. In addition, the employer may refuse to allow his or her employees to be interviewed during normal work hours. Inspectors should be aware of the potential need in these situations to offer to interview employees at another time or location if practical and the employees express such an interest (see “Employee Interviews” Section 5.6). The inspector should be aware that if off-site interviews are conducted, it may not be possible to gather all appropriate information at that time, such as regarding a specific respirator that was used.

In rare circumstances the inspector may be unable to interview a witness, for example, if: (1) an interpreter cannot be obtained or (2) the language at issue is spoken by only a very small percentage of the service population.⁷ The inspector should note that he or she attempted to communicate with the individual but was unsuccessful. If a worker speaking that language sought to file a complaint, the inspector has a heightened duty to seek out ways to provide interpretation services. All attempts to contact the complainant/witness should be documented in the inspection report.

Interviews should be conducted in private without the presence of an employer or supervisor. Inspectors should also be aware of potential WPS retaliation concerns. Some employees may be reluctant to be interviewed on the establishment or during work hours if they fear

retaliation. If appropriate and practical, inspectors should offer to interview employees at another time or location.

If the inspector senses that private interviews are not suitable, safe or appropriate on the agricultural establishment during the inspection, then employee interviews may be conducted at a location and time convenient for the worker, such as the labor camp, private residence or other agreed upon location.

Telephone interviews are recommended when the person is unavailable for a face-to-face interview and is willing to discuss the incident with the inspector over the telephone. In addition, telephone interviews can be useful in obtaining preliminary information to initiate or further an ongoing investigation. Additional interview methods also could include using video conferencing if available.

5.6.1 Title VI of the Civil Rights Act of 1964 and Limited English Proficiency

A SLA's obligation to provide meaningful access to limited English proficiency (LEP) individuals stems from Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on national origin. The manner in which a SLA must provide language services may be determined by balancing four factors:

- The number or proportion of LEP individuals eligible to be served or likely to be encountered by the WPS program;
- The frequency that LEP individuals come in contact with the WPS program;
- The nature and importance of the particular activity or service provided by the WPS program; and
- The resources available to the SLA.⁹

5.6.2 Addressing Language Barriers

Providing language interpretation services to interview complainants and critical witnesses is the most common way to address LEP. Inspectors should use their discretion to decide which witnesses are essential for completing an inspection, without regard to their language ability. In each case, the decision about whom to interview will depend on the particular facts of the inspection. For example, if an inspector identifies a witness who is essential to the completion of an inspection and discovers that the witness is LEP, the inspector must take steps to address the language barrier.

In general, inspectors should anticipate the presence of LEP or disabled workers, or both. For example, if the workforce of an area is known to include a high proportion of LEP individuals who are Spanish speakers, the inspector's agency should be prepared to conduct interviews in Spanish, provide a bilingual interpreter, or train non-Spanish-speaking inspectors to interview non-English-speaking field workers and applicators (for example, using EPA's "Breaking Barriers" course). The agency should conduct follow-up interviews to address language or

communication barriers if interviews of the employee-complainant or critical witness could not be conducted at the time of the initial inspection.

5.6.3 Addressing Disabilities

An agency's obligation to accommodate a communication barrier due to an individual's disability, such as a vision, hearing or speech impairment, stems from § 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability. Specifically, the agency must make a reasonable accommodation for known physical or mental limitations of an individual with a disability. For example, when interviewing a worker with a hearing impairment, using a sign language interpreter may be a suitable accommodation. Interviews also could be conducted in writing. If an inspector would have interviewed a particular worker if he or she did not have a disability, then the inspector must make an accommodation for that worker and conduct the interview. If the inspector would not have interviewed that particular worker regardless of his or her disability, then no interview is necessary.

In rare instances, the agency can demonstrate that the accommodation would impose an undue hardship, which the courts have established as a very high burden to meet. Undue hardship means significant difficulty or expense and focuses on the resources and circumstances of the SLA in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, and disruptive or those that would fundamentally alter the nature or operation of the business. For further information and technical assistance regarding reasonable accommodations for disabilities, refer to <https://www.ada.gov>.

SLAs are strongly encouraged to develop ways to overcome communication and language barriers. SLAs may want to become familiar with available bilingual interpreters in the area, consider hiring bilingual inspectors, training English speaking inspectors to communicate with non-English speakers, and using interpreter resources and services or conducting telephone interviews with interpreters when in-person interviews are not feasible. Advanced planning helps ensure that these resources are in place and available when the need arises.

5.7 WORKER INTERVIEWS

The following lists WPS requirements that affect workers and suggests questions inspectors may want to use to gather information to determine compliance. As discussed in sections 5.6.1 through 5.6.3, SLAs are strongly encouraged to develop ways to overcome communication and language barriers.

When conducting a worker interview, the inspector should ask what specific tasks the individual conducts to identify if any handler tasks were conducted. If the worker does perform any of the handler tasks, then he or she is not considered a worker, and the interview should follow the path of questioning under the "Handler Interview" in section 5.8.

5.7.1 Pesticide Safety Training

The applicable regulation is:

Pesticide Safety Training for Workers (§170.401) -- An agricultural employer shall assure that each worker who is required to be trained has been properly trained according to the WPS requirements. Workers must be trained before doing any worker tasks and within the last 12 months.

The inspector should:

- Ask to review training records to determine if appropriate worker training was provided, if not conducted earlier (see section 5.4.2). However, to verify for individual workers, the inspector may still want to:
 - Ask if workers received the WPS safety training, and if it was within the last 12 months.

5.7.2 Decontamination Supplies

The applicable regulation is:

Worker Decontamination (§170.411) -- An agricultural employer must provide decontamination supplies for workers for routine washing and emergency decontamination for any worker performing an activity in an area where a pesticide was applied and contacts anything that has been treated with the pesticide. Supplies must include soap (no gels or wet towelettes), water (1 gallon per worker), and single use towels.

- Supplies must be within ¼ mile or nearest vehicular access.

An inspector should:

- Ask where and when decontamination supplies are provided;
- Ask the worker what supplies are provided and if all the supplies are available at the start of each work period;
- Ask if the supplies are replenished through the day to maintain an adequate supply.

5.7.3 Emergency Assistance

The applicable regulation is:

Agricultural Employer Duties (§170.309(f)) -- If there is reason to believe that a worker has been exposed to pesticides or shows symptoms of poisoning within 72 hours after working on the agricultural establishment, the agricultural employer must provide emergency assistance. See section 5.5.1.4 for details.

An inspector should:

- Ask the worker if they know what to do in case of a pesticide exposure incident and how to obtain emergency assistance;

- Ask if the worker knows where the nearest emergency medical facility contact information is located. If not, note and follow-up with agricultural employer;
- Ask if he or she is aware of any pesticide exposure incidents at the establishment. If so, the inspector should report the incident if and as appropriate.

5.7.4 Display of Pesticide Safety, Application and Hazard Information

The applicable regulations are:

Posted Pesticide Safety Information for Workers (§170.311(a)) -- An agricultural employer shall display pesticide safety information when workers are on the agricultural establishment and, within the last 30 days, a pesticide subject to WPS has been applied or a REI has been in effect.

The inspector should:

- Ask if workers know where pesticide safety information is located;
- Ask if workers know where the emergency medical information is located. Emergency medical information is at the bottom of the pesticide safety display.

Specific Information About Pesticide Applications and SDSs (§170.311(b)) -- An agricultural employer shall display required application information about a pesticide and the SDS when workers are on the establishment within 30 days of a pesticide subject to WPS being applied on the establishment or after a REI has been in effect.

The inspector should:

- Ask workers how they would find out where and what applications were made on the establishment;
- Ask workers if they know where the safety data sheets (SDS) are located.

Access to Pesticide Application and Hazard Information by a Worker or Handler (§170.311(b)(7)) – The agricultural employer must provide pesticide application and/or hazard information (or access to the information) if requested by a worker or handler. The scope of what must be provided is that information that had to be displayed and/or retained during the time that worker or handler was employed at the establishment.

This information must be provided within 15 days of the receipt of the request. The worker or handler may make the request in writing or orally.

The inspector should:

- Inquire if the worker has ever requested pesticide application information or SDSs. If yes, did the worker received the information within 15 days?

Access to Pesticide Application and Hazard Information by a Designated Representative (§170.311(b)(9)) – Any worker’s designated representative may request access to or a copy

of the pesticide application and SDSs described above, on behalf of the worker. The agricultural employer must provide pesticide application and SDSs applicable to the worker's time of employment on the establishment within 15 days after receiving the request.

The inspector should:

- Ask if the worker has ever requested information through use of a designated representative and if so, was the information received appropriate and within the time allowed;
- If the worker requested information through a designated representative but did not receive the information, then the inspector may want to contact the representative for an interview about the request.

Access to Pesticide Application and Hazard Information by Treating Medical Personnel (§170.311(b)(8)) – The agricultural employer must promptly provide a copy of, or access to, pesticide application and hazard information applicable to worker's or handler's time of employment on the establishment if requested (orally or in writing) by treating medical personnel.

Access to Electronic Information

Employers may make SDSs and pesticide application information available through electronic devices or on-site computers only if all the requirements in §170.311 are met. In this case, the inspector should ask if the workers know how to log on to the device, how to locate the correct information and if the device is easily accessible to the worker at all times during the work period and that all workers and handlers know how to access the information. These situations need to be assessed on a case-by-case basis.

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The inspector should:

- Ask if there have been situations where a doctor requested application information and SDSs for a worker. If yes, was the requested information provided?

5.7.5 Establishment-Specific Information

The applicable regulation is:

Knowledge of establishment-specific information (§170.403) -- Before any worker performs any activity in a treated area on an agricultural establishment where within the last 30 days a pesticide product has been used, or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that the worker has been informed of, in a manner the worker can understand:

- The location of pesticide safety information required by §170.311(b);
- The location of pesticide application and hazard information required by §170.311(b);
- The location of decontamination supplies required by §170.411.

The inspector should:

- Ask the worker if the agricultural employer informed workers where to find pesticide safety information, pesticide application information, SDSs and decontamination supplies, and where these items are located.

5.7.6 Notification of Treated Areas and Restrictions During and After Applications

The applicable regulation is:

Notification to Workers of Pesticide Applications (§170.409) — The agricultural employer shall notify workers of any pesticide application orally or by posting warning signs, or both, depending on the statement on the product labeling. (See section 5.5.5.1 for more information on notification requirements.)

The inspector should:

- Ask workers how they were notified about treated areas for recent applications and compare the response to the label requirements. (Note: No notification is needed if workers are not expected to be within ¼ mile of treated area(s) or will not enter the enclosed treated space until after the REI.)
- If appropriate, ask when oral warnings to the workers were provided. The employer must provide oral warnings before or at the beginning of worker's work period.
- If some workers are non-English speaking, ask how warnings are communicated;
- Ask what information is given to the workers. The employer must provide location of treated areas, dates and times of REI, and instructions not to enter;
- Ask if the worker has been instructed to enter fields or an enclosed space while the warning signs are still posted. Entry is not allowed anytime while the signs are posted.

5.7.7 Early Entry

The applicable regulations are:

Early-Entry (EE) Exceptions (§170.603) – An agricultural employer may direct a worker to enter a treated area under the REI to perform certain tasks under certain conditions (for more information on early entry exceptions and restrictions see 5.5.5.3):

The inspector should:

- Ask if the worker entered a treated area while posted or under the REI. If yes, ask when this happened, what were the conditions, and what tasks were involved/directed;
- Ask if the worker was allowed entry before 4 hours after application. (Entry is not allowed except under No Contact.)
- Ask how long the worker was in the treated area? (Time is unlimited for No Contact, but 1 hour in a 24-hour period, for short-term, 4 hours in 24 for Ag. Emergency, and 8 hrs. in 24 for Limited Contact/Irrigation.)

Early-Entry Worker Protections (§170.605) – If an agricultural employer directs a worker to enter a treated area under the REI to perform certain tasks under certain conditions, then particular protections must be provided to that early entry worker. (For complete information on early-entry protections, see section 5.5.5.3). Agricultural employers must:

- Ensure that any early-entry worker is at least 18 years old; (§170.605(a))
- Advise workers which early-entry exception is applied, the location of the early entry area where work activities will be conducted, provide the pesticides applied, dates/times of REI, the maximum time workers can be in the area if contact with treated surfaces is permitted, and specific location of decontamination supplies and the pesticide safety information; (§170.605(b))
- Provide information on human hazard, precautions, first aid, and user safety from the pesticide label; (§170.605(c))
- Provide PPE specified on the pesticide product labeling; (§170.605(d))
- Provide at least 1 pint of water that is immediately available to each early-entry worker if the pesticide product labeling requires protective eyewear for early entry; (§170.605(i))
- Provide decontamination supplies, but not within the area under the REI unless in closed containers. Decontamination supplies must also be available where workers remove PPE; (§170.605(j))
 - Decontamination supplies must include: 3 gallons of water (per early entry worker at the beginning of the work period); soap; and single use towels; (§170.605(h))
- Not allow workers to take used PPE home; (§170.605(g))
- Convey recognition, prevention, and first aid for heat stress (in addition to information provided in the worker safety training. (§170.605(f))

The inspector should:

- If possible, observe early entry workers and if any clearly appear to be under 18, the inspector may ask the individual worker his or her age. The worker does not have to provide proof of age. If the inspector chooses to ask the worker about age, the inspector may want to make clear that it is the employer's responsibility not to employ early entry workers under 18, and that the worker is not in violation. If the early entry worker informs the inspector he or she is under 18, the inspector should document the information and follow up with the employer; (See section 5.5.1.1)
- Ask if the worker was provided with information prior to the early entry task;
- Ask if the worker had been provided the pesticide label to read, or was informed of its content;
- Ask if the worker wore PPE. If yes, ask what PPE was used, and if information about the proper use, removal, cleaning, and maintenance, of the early entry PPE was provided. The inspector should compare the PPE to that required by the label to verify that the proper PPE was provided;
- Ask where the worker removes the PPE;

- Ask if the worker takes the PPE (not work clothing) home to clean;
- Ask the worker if decontamination supplies were provided during the activity and where they were located;
- Ask if eye flush water was provided. Eye flush is only required if the label requires protective eyewear, then at least 1 pint of water in portable containers must be provided per worker;
- Inquire if the worker was instructed about heat stress.

5.7.8 Retaliation

The applicable regulation is:

Prohibited Actions (§170.315) — An agricultural employer shall not intimidate, threaten, coerce, or discriminate against any worker for complying with the WPS requirements or for providing information to the EPA or SLA.

An inspector should:

- Ask workers if they have experienced problems with their supervisor or employer when workers were trying to comply with the WPS.
 - If yes, discuss and record the details of the problems and determine if the workers believe there was any retaliation involved, then follow-up with the supervisor or employer later.

5.7.9 Pesticide Exposure Incidents

An inspector should:

- Ask if the worker has ever been over exposed and what he or she did in response;
- Ask if the worker is aware of any pesticide exposure incidents at the establishment, including drift. If yes, record the details of incident(s) and report the incident if and as appropriate.

5.8 HANDLER INTERVIEWS

A handler is any person, including a self-employed person, who is employed by an agricultural employer, a commercial pesticide handler employer or a farm labor contractor and performs any of the following tasks:

- Mixing, loading, or applying pesticides;
- Disposing of pesticides;
- Handling open containers of pesticides including: rinsing, cleaning and disposing of containers;
- Acting as a flagger;
- Cleaning, adjusting, handling, or repairing parts of mixing, loading or application equipment;
- Assisting with the application of pesticides;

- Entering an enclosed space after the application of a pesticide and before the inhalation exposure level listed in the labeling has been reached;
- Entering a treated area outdoors after application of any soil fumigant during the labeling-specified entry-restricted period to adjust or remove coverings used in fumigation;
- Performing tasks as a crop advisor during any pesticide application or restricted-entry interval, or before the inhalation exposure level listed in the pesticide product labeling has been reached or one of the ventilation criteria established by §170.405(b)(3) or the pesticide product labeling has been met.

The following lists WPS requirements that affect handlers and questions an inspector may ask to gather information to determine compliance.

Under the WPS, both the handler employer and the handler are responsible for compliance with certain requirements. When the inspector interviews a handler, the inspector is obtaining information:

- On the handler employer's compliance with the requirements of the WPS that provide protections for the handler;
- On the handler's compliance with requirements of the WPS that are the responsibility of the handler.

The inspector should discuss the following items, to the extent they are applicable, with handlers during interviews.

In this section, "handler employer" includes both agricultural employers who employ handlers and commercial pesticide handler employers unless one or the other is specifically mentioned.

5.8.1 *Minimum Age*

The applicable regulations are:

Minimum Age (§170.309(c), §170.313(c)) -- Agricultural employers must ensure that any handler is at least 18 years old. Commercial pesticide handler employers must ensure that any handler employed by the commercial establishment is at least 18 years old.

The inspector should:

- Observe handlers and if any clearly appear to be under 18, the inspector may ask the individual handler their age.
 - The handler does not have to provide proof of age.
 - If the inspector chooses to ask the handler about age, the inspector should make clear that it is the employer's responsibility not to employ handlers under 18, and that the handler is not in violation.

- If the handler informs the inspector he or she is under 18, the inspector should document the information and follow up with the employer. (See section 5.5.1.1.)

5.8.2 Pesticide Safety Training

The applicable regulation is:

Pesticide Safety Training for Handlers (§170.501(a)) — Before any handler employee performs any handling task, the handler employer shall assure each handler has been trained. Handlers must be trained before any handling tasks are conducted and within the last 12 months.

The inspector should:

- Determine, if not done previously, if appropriate handler training was provided through the review of training records (see section 5.4.2).
- However, to verify for individual handlers, the inspector may want to ask handlers if they attended WPS safety training in the last 12 months.

Training requirements do not apply to any handler who is currently certified as an applicator of restricted use pesticides §170.501(b)(1) or a handler who is licensed/certified as a crop advisor by a program acknowledged as appropriate by EPA or an SLA (see additional details §170.501(b)(2)).

5.8.3 Decontamination and Eye Flushing Supplies

The applicable regulations are:

Handler Decontamination (§170.509) -- A handler employer shall provide decontamination and eye flushing supplies for removing pesticides and pesticide residues during any handling activity.

- Decontamination supplies must be located:
 - Within ¼ mile or at the nearest vehicular access;
 - At all mixing sites;
 - Outside the treated area or areas under an REI unless the supplies are contained within a closed container protected from pesticides;
 - For pilots, the decontamination supplies must be in the aircraft or at the aircraft loading site.
- Decontamination supplies must include:
 - 3 gallons of water per handler at the beginning of the work period. Water must be replenished as necessary to ensure there is always an adequate supply;
 - soap (no gels or wet towelettes);
 - single use towels; and
 - A clean change of clothing, such as coveralls.
 - An eye-flush system is required if the handler mixes or loads pesticides requiring protective eyewear or uses a closed system operating under pressure. The eye-flush system must be capable of delivering gently running water at a rate of at

least 0.4 gallons per minute for 15 minutes or be 6 or more gallons of water in containers suitable for providing a gentle eye-flush for about 15 minutes.

- A pint of eye-flush water is required for an applicator using pesticides requiring protective eyewear.

An inspector should:

- Ask the handler where the routine decontamination supplies are located;
- Ask the handler if all the routine decontamination supplies are available at the start of each work period and if sufficient water is maintained during the work period;
- Ask if the handler mixes/loads pesticides requiring protective eyewear or uses a closed system operating under pressure. If yes, ask whether an eye-flush system was available at the mix/load site;
- During the site visit, if the inspector has reason to believe the eye-flush system may not be operational, (e.g., spigots are heavily rusted) the inspector should ask when it was last used or tested. If necessary, the inspector can test the eye-flush system to ensure it is operational; to ensure water actually flows at a reasonable flow and appears to be of sufficient quality (odorless, colorless, appropriate temperature). **However, before testing the eye-flush system, the inspector should ensure that any water removed during testing can be replaced quickly;**
- If possible during the site visit, check to see if 1 pint of water is immediately available (i.e., within a few seconds/within a few steps) to applicators using pesticides requiring protective eyewear.

5.8.4 Emergency Assistance

The applicable regulation is:

Emergency Assistance (§170.309) -- A handler employer shall make available emergency medical assistance to any person employed by an agricultural establishment or commercial pesticide handling establishment to perform pesticide handling tasks, and who has been poisoned or injured by exposure to pesticides as a result of employment. See section 5.5.1.4 for details.

The inspector should:

- Ask the handler(s) how they would obtain assistance in an emergency;
- Ask if the handler knows where the nearest emergency medical facility contact information is located;
- Ask if the handler is aware of any pesticide exposure incidents at the establishment.

5.8.5 Display of Pesticide Safety, Application and Hazard Information

The applicable regulations are:

Posted Pesticide Safety Information (§170.311(a)) -- An agricultural employer shall display pesticide safety information when handlers are on the agricultural establishment and, within the last 30 days, a pesticide subject to WPS has been applied or an REI has been in effect.

The inspector should:

- Ask handlers if they know where the pesticide safety information is located;
- Ask where the emergency medical information is located. Emergency medical information is at the bottom of the pesticide safety display.

Keeping and Displaying Pesticide Application and Hazard Information (§170.311(b)) -- An agricultural employer shall display required application information about a pesticide and the SDS when handlers are on the establishment within 30 days of a pesticide subject to WPS being applied on the establishment or after an REI has been in effect.

The inspector should:

- Ask handlers how they would find out where and what applications were made on the establishment and where to find SDSs.

Access to Pesticide Application and Hazard Information by a Worker or Handler (§170.311(b)(7)) – The agricultural employer must provide pesticide application and/or hazard information (or access to the information) if requested by a worker or handler. The scope of what must be provided is that information that had to be displayed and/or retained during the time that worker or handler was employed at the establishment. This information must be provided within 15 days of the receipt of the request. The worker or handler may make the request in writing or orally.

The inspector should:

- Ask handlers how they would obtain a copy of pesticide application information and SDSs;
- Inquire if the handler has ever requested pesticide application information or SDSs and when the handler received the information.

Access to Pesticide Application and Hazard Information by a Designated Representative (§170.311(b)(9)) – Any handler’s designated representative may request access to or a copy of pesticide application and hazard information described above, on behalf of the handler.

The agricultural employer must provide pesticide application and hazard information applicable to the handler’s time of employment on the establishment within 15 days after receiving the request.

The inspector should:

- Ask if the handler has ever requested information through use of a designated representative and if the appropriate information was received within the time allowed.
 - If the handler did **not** receive the information, the inspector may want to contact the representative and interview him or her about the request.
- Follow-up any reported problems with information requests with the employer.

Access to Pesticide Application and Hazard Information by Treating Medical Personnel (§170.311(b)(8)) – The agricultural employer must promptly provide a copy of, or access to, pesticide application information and SDSs applicable to a worker’s or handler’s time of employment on the establishment if requested (orally or in writing) by treating medical personnel.

The inspector should:

- Ask if there have been situations where a doctor requested pesticide application information and SDSs for a handler.
 - If yes, ask if the handler knows if the requested information was provided.

5.8.6 Establishment-Specific Information

The applicable regulations are:

Knowledge of Establishment-Specific Information (§170.503(b) and §170.509) -- Before any handler performs any handler activity on an agricultural establishment where within the last 30 days a pesticide product has been used, or a REI for such pesticide has been in effect, the handler employer must ensure that the handler has been informed, in a manner the handler can understand about the location of pesticide safety information, pesticide application and hazard information, and decontamination supplies.

The inspector should:

- Ask the handler where pesticide safety information, pesticide application information, SDSs, and decontamination supplies are located.

5.8.7 Information on Treated Areas Provided to a Commercial Pesticide Handler Employer and Handler

The applicable regulations are:

Information from the Agricultural Employer Provided to the Commercial Pesticide Handler Employer on Treated Areas (§170.309(k)) – The agricultural employer must provide commercial handler employers with information about the specific location and description of any treated areas on the agricultural establishment where a REI is in effect that the handler may be in, or may walk within ¼ mile of, and the restrictions on entering those areas.

Information from the Commercial Pesticide Handler Employer Provided to the Handler on Treated Areas (§170.313(h)) -- Ensure that whenever a handler who is employed by a commercial pesticide handling establishment will be on an agricultural establishment, the commercial

Access to Pesticide Application and Hazard Information

Employers may make SDSs and other information available through on-site computers only if they meet all the requirements in §170.311. In this case, the inspector should ask if the handlers know how to log on to the computer, how to locate the correct information and if the computers are easily accessible to

pesticide handler employer provides the handler with information about, or ensures the handler is aware of, the specific location and description of any treated areas where a REI is in effect, and the restrictions on entering those areas.

The inspector should:

- Ask if the commercial pesticide handler provided information about the specific location and description of any treated areas on the agricultural establishment where an REI is in effect that the handler may be in, or may walk within ¼ mile of, and any restrictions on entering those areas.

5.8.8 Safe Operation of Equipment

The applicable regulations are:

Safe Operation of Equipment (§170.313(f) and §170.309(i)) -- All pesticide handler employers must ensure that before any handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

Before each day of use, equipment to be used for mixing, loading, transferring, or applying pesticides must be inspected for leaks, obstructions, and worn or damaged parts, and any damaged equipment must be repaired or replaced. §170.313(g) and §170.309(j)

The inspector should:

- Ask if the handler receives instruction on any equipment to be used;
- Ask if the equipment is inspected before each day of use.

5.8.9 Restrictions for Handlers and Handler Employers during Applications

The applicable regulation is:

Requirements during Applications (§170.505) – The handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler involved in the application. §170.505(a).

Suspending Applications (§170.505) -- After January 1, 2018, the handler performing the application must immediately suspend a pesticide application if any worker or other person, other than an appropriately trained and equipped handler involved in the application, is in the Application Exclusion Zone described in §170.405(a)(1) or the area specified in column B of the Table in §170.405(b)(4). §170.505(b) See Appendix D for Table.

The Application Exclusion Zone is:

- The area that extends 100 feet horizontally from the application equipment (dispersion points) in all directions during applications made:
 - Aerially;

- By air blast;
- As spray with droplet size of extremely fine, very fine or fine spray quality (ASABE S5722-1);
- As a fumigant, smoke, mist or fog.
- The area that extends 25 feet horizontally from the application equipment (from dispersion points) in all directions during application (when not applied as above) sprayed from a height of greater than 12 inches from the planting medium using a spray quality of medium or larger.
- There is no application exclusion zone when the pesticide is applied in a manner not described above.

More information on the AEZ

EPA has developed an interpretive policy on the requirements associated with the AEZ, and a series of questions and answers. See Appendix E and <https://www.epa.gov/pesticide-worker-safety/worker-protection-standard-and-application-exclusion-zone-frequently-asked>

If there are persons in the AEZ, who are on the establishment property, the application cannot continue until those persons have moved. If there are persons in the AEZ outside the boundary of the establishment, the handler cannot continue until he or she can ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler involved in the application. For more information, see the Interpretive Policy on the AEZ and Questions and Answers at Appendix E and at <https://www.epa.gov/pesticide-worker-safety/worker-protection-standard-and-application-exclusion-zone-frequently-asked>.

The inspector should:

- Ask the handler to describe the AEZ for a recent application made; Ask if there have ever been people in the AEZ when the handler was applying, and how he or she responded (or what the handler would do if there are people in the AEZ);
- Ask how the handler knows when to continue an application after suspending the application. It is not necessary for the handler to physically stop for a specific length of time;
- Ask if anyone was ever contacted and what the circumstances were. Report the pesticide exposure incident if and as appropriate.

5.8.10 Handler Knowledge of Labeling and Application-Specific Information

The applicable regulations are:

Knowledge of Labeling and Application-Specific Information (§170.503(a)(1)) -- The handler employer must ensure that before any handler performs any handler activity involving a pesticide product, the handler has read the portions of the labeling requirements applicable to the safe use of the pesticide or has been informed in a manner the handler can understand of all labeling requirements and use directions applicable to the safe use of the pesticide.

The handler employer must ensure that the handler has access to the applicable product labeling at all times during handler activities. (§170.503(a)(2))

The handler employer must ensure that the handler is aware of requirements for any entry restrictions, application exclusion zones and restricted-entry intervals as described in §170.405 and §170.407 that may apply based on the handler's activity. (§170.503(a)(3))

The inspector should:

- Ask the handler if and when the labeling information and its requirements were provided for recent applications;
- Ask if the handler was told about any entry restrictions, AEZs, and REIs.

5.8.11 Applications of Highly Toxic Pesticides

The applicable regulation is:

Handlers Using Highly Toxic Pesticides (§170.505(c)) -- A handler employer must ensure that any handler who is performing any handler activity with a pesticide product that has the skull and crossbones symbol on the front panel of the pesticide product label is monitored visually or by voice communication at least every two hours.

The inspector should:

- Ask if the handler uses pesticide products with the skull and crossbones symbol on the label. If yes, ask what safety precautions are taken when using these toxic products.

5.8.12 Fumigant Applications in Enclosed Space Production

The applicable regulation is:

Fumigant Applications in Enclosed Space Production (§170.505(d)) – The handler employer must ensure all of the following: handlers must maintain continuous visual or voice contact with another handler stationed immediately outside the enclosed space, and the handler stationed outside the enclosed space must have immediate access to and must use the label required PPE if rescue is needed.

The inspector should:

- Ask if the handler conducts fumigant applications in enclosed space production. If yes, ask what safety precautions are taken when applying fumigants in enclosed space production;
- Ask what preparations are made in case a rescue is needed.

5.8.13 Personal Protective Equipment (PPE) for Handlers

The applicable regulation is:

PPE Requirements (§170.507) -- 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.

The inspector should:

- Ask the handler what PPE was worn for a recent pesticide application;
- Check to see if PPE used was that required;
- Ask the handler if the PPE was clean and dry when donned.

Respirator Use (§170.507(b)(10)) -- Whenever a respirator is required by the pesticide product labeling, the handler employer must ensure that the requirements of paragraphs §170.507(b)(10)(i) through (iii) are met (i.e., provide fit testing, training and a medical evaluation) before the handler performs any handler activity where the respirator is required to be worn.

The inspector should determine if an appropriate medical evaluation, fit testing and training was provided through the review of training records (see section 5.4.2). However, to verify for individual handlers, the inspector may want to:

- Ask if the handler is required to wear a respirator by any pesticide labeling. If yes, ask:
 - If the handler received a medical evaluation before wearing the respirator;
 - If the handler was fit tested on the exact same respirator (same make, model, style and size) that was worn;
 - If the handler was trained before using the respirator and within the last 12 months.

For more information on respirator requirements, see section 5.4.2 and Appendix C for the OSHA regulations.

Use of PPE (§170.507(c)) — Handler employers must ensure that PPE is used correctly, has been inspected before each day of use, and damaged equipment is repaired or replaced.

The inspector should:

- Ask if the handler received training on how to use PPE correctly; §170.507(c)(1)
- Ask if damaged PPE is repaired or replaced.

Cleaning and Maintenance of PPE (§170.507(d)) — Handler employers must ensure that all PPE is cleaned according to manufacturer's instructions or pesticide product labeling before each day of reuse (or if none, washed in detergent and hot water). In addition, handler employers must ensure:

- Contaminated PPE is kept separate from cleaned PPE, cleaned separately from other clothing, and dried thoroughly before storage;
- Clean PPE must be kept separate from pesticide contaminated areas and personal clothing;
- Handlers must have a place away from pesticide storage or pesticide use areas to:

- Store personal clothing;
- Put on and remove PPE.
- Particulate filtering respirators must be replaced after 8 hours of use if not earlier. Particulate filtering respirators also must be replaced when:
 - Breathing resistance is excessive;
 - The filter has damage or tears;
 - Required by manufacturer's directions or the label.

- Gas or vapor respirators must have canisters or cartridges replaced at the end of 8 hours of use, if not earlier. Gas or vapor respirator canisters or cartridges also must be replaced when:
 - There is the first indication of odor, taste, or irritation;
 - Maximum use time is reached as per OSHA 29 CFR §1910.134(d)(3)(iii)(B)(2) (see box);
 - Breathing resistance is excessive;
 - Required by manufacturer's directions or the label.
- The following information must be provided to the person who cleans/launders the PPE:
 - PPE may be contaminated;
 - Correct way to clean the PPE and how to protect themselves;
 - Proper decontamination methods after handling the PPE.
- The employer must ensure employees do not take PPE home.

OSHA Maximum Use Time

OSHA 29 CFR §1910.134(d)(3)(iii)(B)(2) states, "If there is no *ESLI* [end-of-service-life-indicator] appropriate for conditions in the employer's workplace, the employer implements a change schedule for canisters and cartridges that is based on objective information or data that will ensure that canisters and cartridges are changed before the end of their service life. The employer shall describe in the respirator program the information and data relied upon and the basis for the canister and cartridge change schedule and the basis for reliance on the data."

The inspector should:

- Ask if the handler used a respirator for recent applications and ask what kind of respirator. If yes, and handler uses a particulate filtering facepiece, ask when they are replaced. If the handler uses a gas- or vapor-removing respirator, ask when the canister or cartridge is replaced;
- Ask if the handler is responsible for cleaning, storing or maintaining PPE;
- If appropriate, ask how often the PPE is cleaned, how it is cleaned and how and where it is stored;
- Ask to see where PPE is stored and check the following:
 - Is visibly contaminated PPE stored with clean PPE or clean clothing?
- If PPE is being donned, doffed or cleaned during the inspection, check the following if possible:
 - Are workers or handlers donning PPE that is damaged with holes or tears?

- Are workers or handlers donning PPE in an area away from pesticide use or storage?
- Is PPE being washed according to manufacturer's instructions or pesticide labeling or if none, with detergent and hot water?
- Is clean PPE being stored or donned while still wet?
- Is contaminated PPE being kept separate from clean PPE and other clothing?
- Is contaminated PPE being washed separately from other clothing or laundry?
- Are workers or handlers taking contaminated PPE with them when leaving the establishment?

Handler Heat Stress (§170.507(e)) — Whenever PPE is required during a handler activity, the handler employer must take measures to prevent heat-related illnesses.

The inspector should:

- Inquire what steps, if any, were taken to prevent heat stress, if the handler has suffered from heat stress and what was done in response.

5.8.14 PPE Exceptions

The applicable regulations are:

PPE Exceptions and Substitutions (§170.607(a-c)) -- A chemical-resistant suit may be substituted for coveralls or a chemical-resistant apron. Leather boots may be worn in place of chemical-resistant footwear only in rough terrain. Leather gloves may be worn over chemical-resistant glove liners only when working with plants with thorns.

The inspector should:

- Inquire if the handler makes any labeled PPE substitutions and what the substitutions are.

Closed System PPE Substitutions (§170.607(d)) -- When pesticides are being mixed or loaded using a closed system that meets all of the requirements in §170.607(d)(2) and the handler employer meets the requirements of §170.607(d)(3) specific exceptions to label specified PPE are permitted. If the products are not contained, the system cannot qualify for PPE substitutions. Water soluble packaging that is compromised is no longer considered a closed system, and then full labeled PPE must be worn.

The following conditions must be met to apply the closed system PPE exceptions.

- The closed system removes the pesticide from its original container and transfers the pesticide product through connecting hoses, pipes and coupling that are sufficiently tight to prevent exposure of handlers to the product, except for the negligible escape associated with normal operation of the system or the pesticide is loaded in intact, sealed water soluble packaging;
- The closed system operating instructions are available at the mix/load site;

- The operating instructions are clearly legible and include procedures for use, safe removal of any probe, maintenance, cleaning, repair, known restrictions/limits relating to the system such as incompatible pesticides or unsuitable containers, limits on the ability to measure a pesticide, and procedures dealing with partially-filled containers;
- Handlers must be trained and use the system according to the written instructions;
- The closed system must be cleaned and maintained according to the written instructions;
- All label specified PPE must be immediately available;
- Protective eyewear must be worn if the closed system operates under pressure.

When the above conditions are met, the following exceptions to PPE are permitted:

- Handlers using a closed system to mix/load pesticides with signal words “DANGER” or “WARNING” may substitute a long-sleeved shirt, long pants, shoes and socks, chemical-resistant apron, protective eyewear, and protective gloves for any labeled PPE;
- Handlers using a closed system to mix/load pesticides with signal word other than above may substitute a long-sleeved shirt, long pants, shoes and socks, and protective eyewear, and for any labeled PPE.

The inspector should:

- Inquire if the handler uses a closed system under pressure for any mixing/loading of pesticides. If so, ask what PPE is used;
- Ask if and when the handler was trained in the use of the closed system;
- Ask the handler if any PPE substitutions were made and if so, what they were;
- During the site visit, if substitute PPE is being used, see if written operating instructions for the closed system are available at the mix/load site and check that all labeled PPE is available immediately to a handler in an emergency.

Enclosed Cab PPE Exceptions (§170.607(e)) – If a handler applies a pesticide from inside a vehicle’s enclosed cab, and if the conditions listed below (§170.607(e)(2)) are met, the following exceptions to the label specified PPE are permitted. However, all label required PPE must still be immediately available and stored in a sealed container in the vehicle and handlers must wear full PPE required by the label when they exit the vehicle in the treated area, and must remove PPE before reentering the cab.

- Handlers may substitute long-sleeved shirt, long pants, shoes and socks for required skin and eye protection.
- A particulate filtering respirator (NIOSH TC-84A) is not required if the enclosed cab has functioning air ventilation system maintained per manufacturer instructions. (Note older labels may refer to dust/mist filtering respirators instead of the current terminology using particulate filtering respirator.) Other required respirators must be worn inside an enclosed cab.

The inspector should:

- Ask if the handler uses an enclosed cab for pesticide applications. If so, ask what PPE is used;
- Ask if the handler ever exits the vehicle within a treated area during applications or within the REI and what PPE is used.

Aerial Applicator PPE Exceptions (§170.607(f)) – For aerial applications, substitutions of label specified PPE is permitted under certain conditions:

- For open cockpit (rare), labeled PPE must be worn, except chemical-resistant footwear is not needed; a helmet with a face shield may substitute for headgear or protective eyewear;
- For enclosed cockpit, long-sleeved shirt, long pants, shoes, socks may substitute for labeled PPE;
- Chemical-resistant gloves are optional unless required on the label;
- If chemical-resistant gloves have been used, they must be stored in an enclosed container to prevent contamination of the cockpit.

Helicopters

Helicopters with open sides do not meet the definition of enclosed cockpits and so no substitution of PPE is allowed.

The inspector should:

- Ask the handler what PPE is used during aerial applications and if any substitute PPE is used;
- Ask the handler where the gloves are kept if used.

Crop Advisors (§170.607(g)) – Crop advisors may substitute the PPE required on the label for handler activities under certain conditions. Entry into a treated area during the REI using substitute PPE can only be done:

- At least 4-hours post-application;
- When the inhalation exposure level on the label is reached, or ventilation in §170.405(b)(3) is met. See Appendix D for the Table on Entry Production Restrictions During Enclosed Place Pesticide Application;
- The crop advisor or employees are only performing crop advising tasks;
- Crop advisors and employees in a field under the REI may substitute the items below for handler PPE:
 - Early entry PPE;
 - Coveralls, shoes plus socks, chemical-resistant gloves made of any waterproof material, and, if the labeling requires protective eyewear for handlers, eye protection.

The inspector should:

- Ask the crop advisor what PPE the crop advisor wears and if he or she wears any substitute items from those required;
- Ask the crop advisor under what conditions PPE exceptions are made.

Note, this PPE exception applies to all crop advisors, not just those who are licensed/certified crop advisors under a program acknowledged as appropriate by EPA or an SLA.

5.8.15 Retaliation

The applicable regulation is:

Prohibited Actions (§170.315) — A handler employer shall not intimidate, threaten, coerce, or discriminate against any handler for complying with the WPS requirements or for providing information to the EPA, State, or Tribal government.

The inspector should:

- Ask handlers if they have experienced problems with their supervisor or employer while the handler was trying to comply with the WPS. If yes, discuss and record the details of the problem and determine if the handlers believe there was retaliation involved, then follow-up with the supervisor or employer.

5.8.16 Pesticide Exposure Incidents

The inspector should:

- Ask if there have been any incidents and how they were handled. Report the incident if and as appropriate.

5.9 EXIT CONFERENCE

The exit conference is an important final element of the inspection. The conference is an opportunity for the inspector to answer questions about the regulations, and to provide fact sheets or other compliance assistance information that explain the regulations or aid in maintaining compliance.

At the end of inspections conducted using federal credentials, the inspector should issue a receipt for samples to the employer/manager for samples collected, such as photos, copies of records, etc. While the inspector should note observed variances from the regulations, the inspector should not express any opinions about violations and should not make any conclusions of law. The inspector may explain that compliance determinations are done later by a compliance officer in association with the inspector.

Inspectors who conduct WPS inspections under SLA authority and using SLA credentials should follow appropriate SLA procedures. SLAs may have the authority to make compliance determinations on-site and to issue a warning or field notice of violation.

CHAPTER 6. POST INSPECTION

One of the most important activities after the inspection is to prepare an inspection report. The inspection report is critical to support enforcement actions if violations are found at the establishment. The report should include a written narrative, supportive documentation like photos, interviews and statements, as necessary to support the facts and/or suspected violations. The final inspection report should establish the compliance status of an establishment in a factual, objective and consistent manner. If suspected violations of the WPS are included, the report should be labeled as “Enforcement Sensitive.” Refer to Chapter 16, “Inspection Report and Supporting Documentation” of the FIFRA Inspection Manual for more information.

If an SLA inspection is performed with Federal credentials, then the inspection file should be forwarded to the EPA Region for review and possible enforcement action. If the inspection is performed under SLA credentials, enforcement actions should be taken in accordance with the SLA’s Enforcement Response Policy (ERP) and the nature of the WPS violation. Egregious WPS violations detected on-site may be addressed immediately by the inspector in accordance with SLA protocols, SOPs, and the ERP. In cases with egregious violations, compliance assistance may be provided to the employer/manager on-site, but not in lieu of appropriate enforcement.

If violations of law are detected during an inspection and documented properly, EPA, or the SLA may initiate a civil or criminal enforcement action or suitable notice of warning. See Chapter 17 of the FIFRA Inspection Guidance for more information on enforcement processes and the role of the inspector.

End Notes

¹ EPA's Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Inspection Manual, October 2013, <https://www.epa.gov/sites/production/files/2014-01/documents/fiframanual.pdf>

² WPS Rule at: <https://www.epa.gov/pesticide-worker-safety/revisions-worker-protection-standard>

³ Title VI of Civil Rights Act of 1964 at: <https://www.epa.gov/civilrights/t6facts.htm>

⁴ For information and technical assistance on the Americans with Disabilities Act, see <https://www.ada.gov>

⁵ EPA biosecurity procedures for guidelines to be followed when entering and exiting farms or ranches that contain livestock or poultry. (<https://www.epa.gov/compliance/guidance-biosecurity-procedures-visits-livestock-and-poultry-facilities>)

⁶ FIFRA requires that a Notice of Inspection (NOI) be provided whenever an inspection is to be conducted under the authority of FIFRA. When federal EPA credentials are used to conduct a FIFRA inspection, the inspector must issue a NOI to the establishment owner or person being inspected. SLAs may have similar requirements when conducting inspections under their authority.

⁷ OSHA 29 CFR 1910.134, https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=12716

⁸ See Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 35,602 (June 25, 2004) at: <https://www.epa.gov/ocr/assisting-people-limited-english-proficiency>

⁹ For further information regarding LEP, refer to <https://www.lep.gov> and state civil rights resources.