

Office of Enforcement and Compliance Assurance

INSPECTION MANUAL

Worker Protection Standard Inspection Manual

Number: OECA-MANL-2016-001-R1

8/15/2018

U.S. Environmental Protection Agency



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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.

History	Effective Date
Worker Protection Standard Inspection Manual Revisions: <ul style="list-style-type: none">• Appendix B Inspection Checklists, formatting changes and inclusion of references to the How to Comply Manual, pages 80-99.• Added compliance date for inclusion of revised worker and handler safety training content of December 19, 2018, page 20.	8/15/2018
Worker Protection Standard Inspection Manual, Original Issue	1/2/2017

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 1. INTRODUCTION

This manual is a supplement to the Environmental Protection Agency's (EPA) Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Inspection Manual, October 2013. Inspectors should consult that manual for basic information on FIFRA inspections such as health and safety, entry/opening conference, use and for-cause inspection procedures, sample collection, records examination, documentation, report writing and other related topics. This document focuses on elements of a FIFRA inspection that are unique to Worker Protection Standard (WPS) inspections. EPA, states and tribes should follow these procedures for WPS inspections conducted using federal credentials. Inspectors using state or tribal credentials are encouraged to incorporate these procedures into state or tribal procedures. More information on Use Inspections is provided in Chapter 8 of the EPA 2013 FIFRA Inspection Manual.¹

This manual provides information to EPA and pesticide lead agency inspectors on how to conduct WPS inspections that adequately document compliance with the WPS rule² requirements and includes how to involve individuals with limited English proficiency (LEP), required under Title VI of the Civil Rights Act³, or disabilities, in conformance with the Rehabilitation Act⁴, in the WPS inspection process. This manual is intended to promote nationally consistent WPS inspections.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. As recipients of federal financial assistance, states are obligated to comply with the requirements concerning Limited English Proficiency (LEP). See Section V for more information on how Title VI affects WPS inspections.²

The U.S. Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors. As a recipient of federal financial assistance, states are obligated to accommodate a communication barrier due to an individual's disability, such as a vision, hearing or speech impairment. Specifically, states must make a reasonable accommodation for known physical or mental limitations of an individual with a disability. See Section V for more information on how the Rehabilitation Act affects WPS inspections.

1.1 THE WORKER PROTECTION STANDARD

The WPS was promulgated in 1992 under Section 25 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), and a revised final WPS rule was published in the *Federal Register* on November 2015, resulting in significant revisions to WPS provisions and requirements.

Under FIFRA section 12(a)(2)(G), it is unlawful for any person "to use any registered pesticide in a manner inconsistent with its labeling." When the following WPS reference is included on a

pesticide label within the label's "Agricultural Use Requirements" section, "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170", users of the pesticide must comply with all of the applicable requirements of the WPS contained in the Code of Federal Regulations, Title 40, Part 170. Exceptions to the requirement to comply with Part 170 include requirements that are inconsistent with product-specific instructions on the labeling, or as provided for in 40 CFR §170.601, §170.603 and §170.607. A person who fails to comply with or perform the duties required by the WPS is in violation of the label requirements and violates FIFRA section 12(a)(2)(G) and is subject to civil penalty under section 14 of FIFRA. A person who knowingly violates section 12(a)(2)(G) is subject to FIFRA section 14 criminal sanctions. FIFRA section 14(b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA.

FIFRA authorizes EPA to grant primary pesticide enforcement responsibility to state pesticide lead agencies or "SLAs" for pesticide use violations (FIFRA §26). EPA may provide similar authority to tribes and territories. Hereafter "SLA" is used to refer to all pesticide lead agencies. A lead agency has responsibility to ensure compliance with the Worker Protection Standard.

1.2 GOALS OF WPS USE INSPECTIONS

WPS agricultural use inspections (hereafter called WPS inspections) are a subset of the overall number of agricultural use inspections (pursuant to 40 CFR part 170). Verifying compliance with WPS requirements is a fundamental element of any pesticide inspection conducted at an establishment where WPS-labeled pesticides are used in or related to the production of agricultural plants.

The WPS compliance monitoring program includes:

- Ensuring employers provide the proper protections from pesticides to workers and handlers required under the WPS regulations;
- Decreasing incidents of pesticide exposure among workers and handlers through increasing employer compliance;
- Ensuring workers and handlers understand appropriate ways, and are allowed to take steps, to protect themselves from pesticides.

The goals of WPS inspections include:

- Strategically targeting inspections to maximize the number of WPS requirements that can be evaluated;
- Obtaining evidence to evaluate compliance, including documenting data to support the determination of violations and any appropriate enforcement actions;
- Identifying problems during the inspection to ensure immediate corrective action as needed;
- Complying with Title VI of the Civil Rights Act and the Rehabilitation Act;
- Providing information to the establishment about the WPS regulatory requirements.

CHAPTER 2. TYPES OF WPS INSPECTIONS

2.1 WPS INSPECTIONS

A WPS inspection must meet the following conditions:

- Pesticides with WPS labeling have been used recently on the establishment.
- All the applicable WPS requirements have been covered.
- The inspector has interviewed (or attempted to interview) one or more available employed workers and handlers present on the establishment (or provides an adequate explanation of the reason no workers and handlers were interviewed).

2.1.1 Routine (Non-Complaint Based) Inspections

Routine inspections are selected based on a neutral inspection targeting scheme (i.e., they are not based on tips or complaints).

2.1.2 For Cause (Complaint Based) Inspections

A “for cause” inspection is conducted in response to suspected pesticide misuse generally from a tip or complaint. For cause inspections require the inspector to indicate on the Notice of Inspection that the inspection is “for cause,” and generally entail more detailed documentation of WPS compliance and potential noncompliance by the employer. For detailed instructions on conducting for cause use inspections, see Chapter 8 of the FIFRA Inspection Manual, 2013.

2.2 INSPECTION TIMING – TIER I AND TIER II

The best time to conduct a WPS inspection is when the agricultural establishment is actively engaged in handling pesticides or conducting field worker activities. The majority of WPS requirements apply in the time period that starts with an application and ends 30 days after the REI expires. However, it is possible to conduct a WPS inspection at any time. The 2015 WPS Rule’s recordkeeping provisions for safety training, pesticide application and hazard information, and those related to respirator requirements can be evaluated during any WPS inspection, regardless of the time from application.

To distinguish between inspections conducted during the most optimal time period and those conducted at other times, EPA defined two types of WPS inspections, Tier I and Tier II inspections. **All WPS inspections should cover all the requirements that apply at the time of the inspection and include interviewing workers and handlers, or provide an adequate explanation of the reason no workers and handlers were interviewed, for example, if workers/handlers are not present or did not agree to be interviewed. If these conditions are not met, the inspection may not be considered a WPS inspection, but may be considered an “agricultural pesticide use” inspection.**

2.2.1 WPS Tier I

A WPS Tier I compliance monitoring inspection must:

- Be conducted within the time frame that begins when pesticides are applied and extends to 30 days after the expiration of the REI for the last pesticide used that contains the WPS reference statement;

2.2.2 WPS Tier II

A WPS Tier II compliance monitoring inspection is:

- Conducted at any time **other than** within the time frame that begins when pesticides are applied and extends to 30 days after the expiration of the REI for the last pesticide used that contains the WPS reference statement;

In general, EPA recommends that Tier II compliance monitoring inspections be conducted within the current growing season or in the next growing season not exceeding six months from the last date of application.

CHAPTER 3. TYPES OF REGULATED ESTABLISHMENTS

The WPS requirements apply to agricultural establishments involved in crop production, commercial pesticide handling establishments and individual handlers that provide crop advising services to, or apply pesticides on, agricultural establishments involved in crop production.

3.1 AGRICULTURAL ESTABLISHMENT

An agricultural establishment is a:

- Farm,
- Forest operation, or
- Nursery engaged in the outdoor or enclosed space production of agricultural plants.

An establishment that is not primarily agricultural is an agricultural establishment if it produces agricultural plants for transplant or use (in part or their entirety) in another location instead of purchasing the agricultural plants.

The WPS requirements apply to agricultural establishments that **use a WPS-labeled pesticide product directly related to the production of an agricultural plant and employ workers or handlers**. This definition is explained in detail below:

- **Use a WPS-labeled pesticide product** – WPS requirements are incorporated onto pesticide labeling of agricultural use products by a WPS reference statement contained in the “Agricultural Use Requirements” box;
- Are **directly related to the production** – Directly related to the production includes grown, maintained or otherwise produced for commercial purposes, or for use in part or entirety in another location;
- **Of an “agricultural plant”** – An agricultural plant includes, but is not limited to, grains, oil crops, fruits and vegetables, wood fiber or timber products; flowering and foliage plants and trees; seedlings and transplants and turf grass produced for sod;
- **Employ workers or handlers** -- Under WPS, employing workers or handlers is defined as obtaining the services of a person in exchange for a salary or wages, including piece-rate wages either directly or through a labor contractor (see §170.305). Non-monetary forms of compensation, such as class credit for students, are not considered “employment”. However, a situation where a worker is given some of the product being produced (e.g., a pound of spinach for every 4 hours worked) which is later purchased by the employer for cash is considered employment and is an example of piece-rate wages.

3.2 OWNERS OF AGRICULTURAL ESTABLISHMENTS AND THEIR IMMEDIATE FAMILY

Agricultural establishment owners of establishments that are majority-owned by immediate family members (i.e., more than 50% ownership) are covered by a subset of WPS requirements that apply to owners of agricultural establishments and their immediate family (§ 170.305).

When conducting inspections at these types of agricultural establishments, inspectors should identify if the establishment employs any workers or handlers that are not immediate family members. The owners of agricultural establishments must provide all of the applicable protections required by this part for any employees or other persons on the establishment that are not members of their immediate family.

Inspectors should be aware of the following:

- 1) There is no exemption for “family farms”;
- 2) The “agricultural establishment” itself is NOT exempt from the WPS;
- 3) This exemption only covers the owner and immediate family members; and
- 4) The exemption applies to establishments that are majority-owned (i.e., more than 50%

**2015 Change to Exemption for
Owners of Agricultural
Establishments and their
Immediate Family**

Prior to the 2015 revisions to the WPS regulations, farm owners who use WPS-labeled products directly related to the production of an agricultural plant, on establishments that are – wholly owned by immediate family members were covered by a subset of WPS requirements. The 2015 regulation revised these requirements to include establishments that are majority-owned by immediate family members (i.e., more than 50% ownership).

ownership) by immediate family members (rather than wholly-owned by immediate family members as prior to the 2015 revisions).

The definition of “immediate family” (§170.305) is limited to: spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins.

Owners and immediate family must still comply with all labeling requirements and the following parts of the WPS:

- When respirators are required on the pesticide labeling, must follow WPS requirements for training, medical evaluation, fit testing, and recordkeeping;
- Must use the PPE and other work attire listed on pesticide labeling (and are eligible for the allowable exceptions to PPE, such as when using a closed system);
- Must keep immediate family members out of the treated area until the restricted-entry interval (REI) expires;
- Must ensure pesticide is applied so it does not contact anyone, including members of the immediate family (requirement on label and in WPS);
- Everyone, including members of the immediate family, must be kept away from the treated area during the application and the application exclusion zone or “AEZ” (for information on the AEZ, see section 5.5.3);
- If any workers are considered Early Entry Workers the owner must ensure each early entry worker is provided with the required PPE, that it is used as intended, properly maintained, and that all required conditions are met.
- If the owner is also the handler, the owner must comply with the handler restrictions concerning the AEZ (for information on the AEZ, see section 5.5.3); and
- Any pesticide applied must be used in a manner consistent with the product’s labeling.

Inspectors should routinely ask if the agricultural establishment being inspected employs any family members. If so, the inspector should ask how many are employed and what relation they are to the owner. In this way, the inspector should be able to identify if the exemption that applies to owners of agricultural establishments and their immediate family applies to all workers and handlers or a subset.

3.3 COMMERCIAL PESTICIDE HANDLING ESTABLISHMENT

Commercial pesticide handling establishment is defined in §170.305 as any enterprise, other than an agricultural establishment, that provides pesticide handler or crop advising services to agricultural establishments. When inspecting a commercial pesticide handling establishment, it is important for the inspector to determine the pesticide handler employer’s compliance with all relevant WPS requirements and to determine the individual handler’s compliance with the unique WPS responsibilities for handlers (e.g., suspending application if there is a person or persons in the application exclusion zone).

3.4 FARM LABOR CONTRACTORS (FLC)

A farm labor contractor is a person, other than a commercial pesticide handler, who employs workers or handlers to perform tasks on an agricultural establishment for an agricultural employer or a commercial pesticide handler employer.

The agricultural employer is ultimately responsible for WPS protections for workers and handlers whether they work for the agricultural employer directly, or are hired through a farm labor contractor. The agricultural employer may include in contracts with farm labor contractors, a requirement to comply with some aspects of WPS, for example, to conduct pesticide safety training. However, agricultural employers are ultimately still responsible for ensuring that training is conducted and are required under the revised 2015 WPS regulations 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.

In situations where the agricultural employer has contracted with an FLC to comply with WPS protections and those protections were not provided, the inspector should interview and obtain statements from both the agricultural employer and the FLC.

The scope of an SLA's inspection of an FLC will depend on whether the SLA has the regulatory authority to take an enforcement action for violations of individual worker protection regulations, including violations by FLCs, or only has authority to enforce against the agricultural employer and handler employer for misuse of the pesticide.

If the SLA has the regulatory authority to take enforcement action for violation of the WPS regulations by FLCs, a WPS inspection should include:

- Evaluation of all applicable WPS requirements; and
- Interviewing workers and handlers, if appropriate.

When inspecting an FLC, the inspector should ask:

- If any WPS responsibilities were required under their contract with the agricultural establishment and if yes, when were they conducted. See section 5.5 on Employer/Supervisor interviews. The inspector should verify this information with workers and handlers during interviews as appropriate.
- Interview FLC workers and handlers to determine if all required WPS safety provisions were provided where applicable. See sections 5.7 and 5.8 on interviewing workers and handlers.

Identifying Farm Labor Contractors

All farm labor contractors are required under the Federal Migrant and Seasonal Agricultural Worker Protection Act (MSPA) to obtain federal certification prior to performing any farm labor contracting activities. For the list of certified farm labor contractors, see

<https://www.dol.gov/whd/regs/statutes/FLClist.htm>.

The Department of Labor also maintains a list of individuals who **may not** engage in any activity as a farm labor contractor. For more information see

https://www.dol.gov/whd/regs/statutes/mspa_debar.htm.

CHAPTER 4. PRE-INSPECTION PLANNING

To effectively plan a WPS inspection, inspectors should be familiar with the following:

- The most common pesticide products used on specific crops;
- How applications are typically made;
- Which products contain WPS language on the pesticide labeling (some products used in organic production have a Section 3 label and contain WPS language; others may not);
- Which products have restricted-entry intervals longer than 48 hours (requiring notification by posting) and;
- Personal protective equipment requirements (e.g., respirators, glove material, etc.).

Understanding these agricultural practices will help inspectors plan inspections for key WPS provisions and requirements, and when employees are most likely to be present.

4.1 DOCUMENT REVIEW

Become familiar with any relevant documents pertaining to the facility to be inspected, such as previous inspection reports and enforcement actions. This review may provide a historical perspective leading to potential compliance trends that can be investigated during the inspection.

4.2 BIOSECURITY, FOOD SAFETY AND PERSONAL SAFETY

For any establishments that maintain livestock or poultry in addition to crop production, the WPS inspector should understand biosecurity procedures.⁵ Biosecurity procedures minimize the risk of an inspector transmitting animal diseases from livestock or poultry facilities, to livestock or poultry at another location. SLAs typically have their own biosecurity procedures or may choose to follow EPA's Biosecurity Standard Operating Procedures.

(<https://www.epa.gov/compliance/guidance-biosecurity-procedures-visits-livestock-and-poultry-facilities>)

Some agricultural establishments may restrict access to certain fields for plant biosecurity or food safety purposes (e.g., FDA's Food Safety Modernization Act requirements, or for accreditation under Good Agricultural Practices programs). The inspector should note this in the report.

Follow appropriate health and safety requirements and recommendations (federal requirements are contained in Chapter 2 of the FIFRA Inspection Manual).