Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretive Policy

Document Contents

1 Accelerated Provisions

1-1 Ventilation criteria

Question: The accelerated provisions do not reference section 170.110(c)(3) (established ventilation criteria) as cited in section 170.112(b)(2) and (c)(3). Therefore, it appears that the ventilation criteria provisions are not part of the accelerated implementation. Other requirements do make applicable references.

Answer: Any ventilation requirement specified on product labeling must be met. The ventilation criteria in the WPS are not part of the accelerated provisions. (March 22, 1993)

1-2 Labeling in reference to...

Question: How can EPA require compliance with the accelerated provisions if they are not on the label? The mechanism of the entire worker protection changes were intended to be done via the label (i.e., label statements and reference to part 170.)

Answer: The WPS reference must be on the label before the accelerated provisions are applicable. (March 22, 1993)

2 Crop Advisors

2-1 Status under the WPS

Question: Which training standards apply to the crop advisor? If the advisor is defined as a handler, does this mean that more than 1 hour per 24 hours can be spent doing pest assessments in treated fields? If not, is the time limited to one hour per field or to all treated areas in a 24 hour period? If crop advisors are limited to short-term activities, the impact has potential adverse impacts affecting integrated pest management systems, pest insurgence, pesticide use, and valuable services available to production agriculture.

Answer: If crop advisors enter an area during an application or an REI they are considered handlers and must be trained as handlers. This allows the crop advisor unlimited access to the field during the REI, provided he/she is provided all other WPS handler protections. If advisors are employees of the agricultural establishment and enter field after the REI is over, they are considered workers and would receive worker training if not already trained as a handler. If they are not employed by the agricultural establishment (i.e., for-hire) they are not protected by the WPS after the termination of the REI. NOTE: Crop advisors will be addressed in the How-To-Comply Manual. (March 22, 1993)

2-2 Knowledge of site-specific information

Question: When must crop advisors employed by a commercial pesticide handling establishment be informed of pesticide treatments or treated areas?

Answer: At 40 CFR part 170.232(b), the WPS requires that whenever a handler, (e.g., a crop advisor), who is employed by a commercial pesticide handling establishment will be performing handling tasks, (i.e., scouting), on an agricultural establishment, the handler employer must assure that the handler is aware of the following information concerning any areas on the agricultural establishment that the handler may be in (or walk within 1/4 mile of) and that may be treated with a pesticide or that may be under a restricted-entry interval while the handler will be on the agricultural establishment:

(1) Specific location and description of any such areas; and
(2) Restrictions on entering those areas.

For example, if commercial crop advisors are scheduled to scout in an area on a farm that remains under an REI, they need to be told the specific location and description of the area and what personal protective equipment they must wear while in that area.

NOTE: The agricultural employer is required to make sure that commercial handler employers have this information. (40 CFR part 170.124)

If crop advisors will be in or on a *vehicle within 1/4 mile* of the treated area, but not in the treated area, no notification is necessary.

If crop advisors are in or on a vehicle in the treated area, notification is necessary.

If crop advisors are on foot, they must be notified if they are in the treated or within 1/4 mile of the treated area.

NOTE: For more information on crop advisors, see the How To Comply Manual, What Employees Need To Know. (February 24, 1994)

3 Decontamination

3-1 Size of eyeflush containers

Question: Does the eyeflush water requirement of Section 170.150 need to be in one pint containers only? Can a single, large container suffice if the contents equal or exceed one pint per worker?

Answer: A single large container would suffice if it were immediately accessible to each worker or handler who requires it. (March 22, 1993)

3-2 Single-use towels

Question: Section 170.150(c)(i) requires "single-use towels" at the decontamination site for workers. However, if early entry activities are performed, "clean towels" are allowed. Why the difference?

Answer: There are two separate requirements for decontamination sites for early-entry workers (and there are two for handlers):

(1) While they are performing early-entry tasks, early-entry workers must be provided a decontamination site that includes single-use towels.

(2) In addition, at the end of their exposure period, early-entry workers must be provided a decontamination site at the place where they remove their personal protective equipment. At this site, "clean towels" (single-use or reusable cloth) are allowed, because this site could be equipped with a shower and single-use towels would be awkward for whole-body drying. (March 22, 1993)

3-3 Decontamination materials for flaggers

Question: Section 170.250 specifies the decontamination requirements for handling activities. Must the employer handler provide separate decontamination materials for flaggers?

Answer: Decontamination facilities for flaggers must be within 1/4 mile of the flagger. If the decontamination site for handlers (i.e., aerial applicators) is more than 1/4 mile from each flagger, then there must be a separate decontamination site to serve such flaggers. For tasks performed more than 1/4 mile from the nearest point reachable by vehicles (cars, trucks, or tractors), the decontamination site may be at the access point. In this circumstance, clean water from springs, streams, lakes, or other sources may be used for decontamination, if such water is more readily available that the water at the decontamination site. (March 22, 1993)

3-4 Immediate availability of eyeflush

Question: In 40 CFR part 170.150(b)(4), the WPS requires the agricultural employer to assure that at least 1 pint of water is immediately available to each worker performing early-entry activities and for which the pesticide labeling requires protective eyewear.

Similarly, 40 CFR part 170.250(d), requires the handler employer to assure that at least 1 pint of water is immediately available to each handler who is performing tasks for which the pesticide labeling requires protective eyewear.

What is meant by "immediately available"?

Answer: In both sections of the WPS addressing availability of eyeflush water, the Agency requires that emergency eyeflush water be carried by the handler or early-entry worker, or be on the vehicle (or aircraft) which the handler or early-entry worker is using, or be otherwise immediately accessible. (40 CFR parts 170.150(b)(4) and 170.250(d))

The How-to-Comply with the Worker Protection Standard Manual states that emergency eyeflush water may be at the decontamination site if the decontamination site is immediately accessible.

Because the WPS specifies that eyewash water must be carried by the handler or early-entry worker, or must be on the vehicle or aircraft that the handler or early-entry worker is using, the eyewash water must be close and accessible to the worker or handler at all times. In addition, because concentrations and causticity of agricultural chemicals vary so greatly (and therefore the duration of exposure necessary for ocular damage to occur is difficult to uniformly determine), emergency eyewash water must be available immediately. If the emergency eyewash water is not being carried on one's person, it must be situated at such a distance that one could get to it within very few seconds. (November 17, 1993)

3-5 Examples of immediate availability

Question: If emergency eyeflush water must be close, accessible, and situated so that one could get to it within very few seconds, what are some examples of places that it may be located/stored so that the above criteria are met?

Answer: In addition to the examples listed above, the following might be additional examples of "immediately available":

(1) Running water, a commercial eyeflush dispenser, or decontamination water in a carboy at a mix/load, storage, equipment cleaning or repairing, or other stationary handling (or early-entry) site for handlers or early entry workers engaged in such activities at the site.

(2) Running water or commercial eyeflush dispensers that are located at frequent intervals and are easily accessed by the handlers/early-entry workers in a bench-type nursery or greenhouse site.

(3) Water that meets the WPS standard for decontamination water that is in a nurse tank or other supply tank that is on (or being dragged by) the vehicle a handler or early-entry worker is operating. (November 17, 1993)

3-6 Examples of unacceptable locations for eyeflush

Question: What are some examples of *unacceptable* locations in which to store emergency eyeflush water (i.e., water would NOT be immediately available)?

Answer: Examples of situations where emergency eyeflush water would NOT be immediately accessible are:

(1) Water on a vehicle but in a locked compartment.

(2) Water for which difficult or time-consuming steps must be taken to access, such as having to uncouple or connect a nurse tank hose, having to unlock a compartment holding the eyeflush dispenser or having to unlock a restroom.

(3) Water located across a stream or commercial road. (November 17, 1993)

3-7 WPS and OSHA requirements for decontamination water

Question: Does the WPS requirement for the use of water safe for drinking preempt OSHA requirements for potable water in its Field Sanitation Standard if the business is currently subject to OSHA standards?

Answer: No, the WPS requirement does not preempt the OSHA requirement for potable water. Please note that the EPA requirement is not for "water safe for drinking" but that the water be of such a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

OSHA's Field Sanitation Standard requires that potable drinking water be made available to workers. The water must be suitably cool and provided in sufficient amounts to meet the needs of all employees. By providing potable water which meets OSHA standards, an agricultural employer may meet the WPS water quality requirement. (March 7, 1995)

3-8 Decontamination requirements and handlers

Question: Does the EPA requirement for decontamination water cover handlers?

Answer: Yes. (See section 170.250.) (March 7, 1995)

3-9 Eyeflush water preemption

Question: Does the EPA's requirement for "eyeflush water" preempt other regulatory requirements for "eyeflush dispensers" for handlers and workers?

Answer: No, the EPA requirement does not preempt other requirements. It is acceptable to use eye flush dispensers provided all the WPS emergency eye flushing requirements are met. (March 7, 1995)

3-10 Decontamination facilities for consultants

Question: If the grower already has a decontamination facility, is that acceptable for a consultant going into the field since the handler-employer would not actually be "providing" it?

Answer: Yes, the handler employer could be providing the decontamination site if the employee has access to the grower's decontamination facility. The decontamination site must meet the WPS requirements.

In this situation, it is suggested that the handler employer work this out in advance with the grower. (March 7, 1995)

3-11 Use of diluent water for decontamination

Question: The regulation at 40 CFR part 170.150(b)(2) prohibits the use of water stored in a tank used for mixing pesticides for decontamination or eye flushing unless the tank is equipped with properly functioning valves or other mechanisms that prevent movement of the pesticides into the tank. From an enforcement standpoint, what are the "other mechanisms" that can be used to prevent movement of pesticides into the tank as discussed in Section 170.150(b)(2)? Would they include merely leaving an air gap between the water hose and the upper level of the pesticide mix in the spray tank?

Answer: Any device or mechanism that prevents contamination from the pesticide mix tank from entering the water tank is sufficient. Some examples include anti-back siphon devices, one-way or check valves, or an air gap sufficient to prevent contamination. (March 7, 1995)

4 Definitions

4-1 Interpretation of the term "use"

Question: Section 170.9 states EPA's interpretation of the term "use." What regulatory effect does this interpretation have? Does this interpretation have the same effect as a definition? Why is it not included with the rest of the definitions in Part 170 rather than under the violations section?

Answer: The purpose of section 170.9 is to explain how the misuse provisions of FIFRA apply to the full range of pesticide-related activities addressed by the WPS. That need only be explained once while the terms in the definitions section are used repeatedly throughout the WPS. Therefore, listing definitions in one section is a convenience to readers. The discussion of "use" was included as opposed to a definition because the term "use" appears in the document in other contexts, e.g., use of PPE, use of equipment, plants used. (March 22, 1993)

4-2 When is a crop harvested?

Question: The WPS does not apply when any pesticide is applied to the harvested portions of agricultural plants or on harvested timber. (40 CFR parts 170.102(b)(9) and 170.202(b)(8)) For the purposes of the WPS, when is a crop harvested?

Answer: The WPS does not apply when any pesticide is applied to the harvested portions of agricultural plants or on harvested timber. Once a crop is harvested, workers performing activities related only to the harvested portion of the agricultural plant are not covered by the requirements of the WPS. NOTE: Harvesting includes packing produce into containers in the field.

For purposes of the WPS, an agricultural plant is considered harvested when:

(1) a desirable portion of the agricultural plant (seed, fruit, flower, stem, foliage, or roots) is detached from its parent, or

(2) a whole agricultural plant is separated from its growth media (soil, water, or other media).

Pesticide applications to harvested portions of agricultural plants or to harvested timber are not within the scope of the WPS.

Pesticide applications on an agricultural establishment that are within the scope of the WPS include:

(1) applications to the "parent" portion of the agricultural plant that remains after the crop has been harvested, if the application is made for the purposes of continuing the production of the "parent" plant or eliminating the "parent" plant.

(2) applications to the growth media that remains behind after the crop has been harvested, if the application is made for the purposes of (a) continuing the production of the "parent" plant or (b) eliminating the "parent" plant or (c) preparing the media for replanting or reseeding of an agricultural plant.

(3) applications to agricultural plants (including transplants) that are in growth media.

(4) applications to agricultural plants or plant portions (seeds, roots, bulbs, cuttings, etc) on an agricultural establishment immediately prior to or during planting, transplanting, or grafting.

Note: This interpretation, for the purposes of the WPS, of when a crop is harvested is NOT intended to intrude on interpretations relating to "Days to Harvest" statements on pesticide labels. (November 17, 1993)

4-3(a) Sod/turf growing establishments, nursery

Question: Under what circumstances is an agricultural establishment growing sod/turf considered a nursery?

Answer: The WPS defines a nursery as any operation engaged in the outdoor production of any agricultural plant to produce cut flowers and ferns or plants that will be used in their entirety in another location. The definition states that such plants include turfgrass produced for sod.

As defined in 40 CFR part 170.3, sod/turf growing establishments are considered to be nurseries if the sod/turf is grown for commercial or research purposes and is to be used in its entirety in another location. (November 17, 1993)

4-3(b) Sod/turf growing establishments, farm

Question: Under what circumstances is an agricultural establishment growing sod/turf considered a farm?

Answer: The WPS defines a farm as any operation, other than a nursery or forest, engaged in the outdoor production of agricultural plants.

Agricultural establishments that are not nurseries and that are growing sod/turf outdoors for commercial or research purposes, for example, for seed production, are considered to be farms. (November 17, 1993)

4-4 Closed systems

Question: What is the definition of a closed system? What personal protective equipment is required when a closed system is used?

Answer: At 40 CFR part 170.240(d)(4), the WPS defines closed systems and allows exceptions to labeling required personal protective equipment (PPE) when a closed system is used provided certain conditions and requirements are met. These exceptions to PPE are allowed unless expressly prohibited by the product labeling.

Closed systems are systems designed by the manufacturer to enclose the pesticide to prevent it from contacting handlers or other people while it is being handled. Such systems must function properly and be used and maintained in accordance with the manufacturer's written operation instructions. Closed systems manufactured by a private person which meet the criteria in the regulations, including the requirement for written instructions, are acceptable.

Examples of closed systems include:

(1) closed mixing/loading systems.

(2) closed application systems designed to incorporate pesticides into soil, but only if the system does not allow any pesticide contact with the air throughout the entire application process.

(3) water soluble bags while the bag is intact.

The WPS provides that handler employers may allow handlers to omit some of the PPE listed on the pesticide labeling for a handling task if the handlers are using a closed system:

(1) When using a closed system to mix or load pesticides with the signal word "DANGER: or "WARNING," handlers need not wear all the PPE listed on the pesticide labeling, but must wear at least:

- long-sleeved shirt and long pants,
- shoes and socks,
- a chemical-resistant apron, and
- protective gloves specified on the pesticide labeling for mixing, loading, and other handling tasks.

2) When using a closed system to mix or load pesticides with the signal word "CAUTION," handlers need not wear all the PPE listed on the pesticide labeling, but must wear at least:

- long-sleeved shirt and long pants, and
- shoes and socks.

3) When using a closed system to do handling tasks other than mixing and loading with ANY pesticide, handlers need not wear all of the PPE listed on the pesticide labeling, but must wear at least:

- long-sleeved shirt and long pants, and
- shoes and socks.

4) When using a closed system that operates under pressure, handlers may wear the reduced PPE specified above, but must add protective eyewear.

Even when reduced PPE is permitted to be worn during a task, handlers must be provided all PPE required by the pesticide labeling for that task and have it immediately available for use in an emergency.

NOTE: For mixing/loading/transferring of pesticides outside the scope of WPS, follow the FIFRA Compliance Program Policy 12.2, Pesticides Closed Transfer, Mixing/Loading and Application Equipment (Closed Systems). (February 24, 1994)

4-5 Water-soluble bags

Question: Is a water soluble bag considered a closed system?

Answer: Yes, for WPS purposes, a water soluble bag is considered a closed loading system and, unless prohibited by the product labeling, handlers may be permitted to wear reduced personal protective equipment (PPE) as outlined in 40 CFR part 170.240(d)(4).

Once a water soluble bag is dissolved, broken, punctured, torn, or otherwise allows its contents to escape, it no longer a closed system and label specified PPE must be worn. In the case of routine mixing and loading with water soluble bags, label-specified PPE for the activity performed must be worn once the bags have lost their integrity, i.e., begin to dissolve in the tank, unless the mix tank and transfer system are closed systems. (February 24, 1994)

4-6(a) Enclosed cabs

Question: What is the definition of an enclosed cab? What personal protective equipment is required when an enclosed cab is used?

Answer: At 40 CFR part 170.240(d)(5), the WPS defines enclosed cabs and allows exceptions to labeling required personal protective equipment (PPE) when handling tasks are performed from inside an enclosed cab provided certain conditions, including the type of cab, and requirements are met. These exceptions to PPE are allowed unless expressly prohibited by the product labeling.

Enclosed cabs must have a nonporous barrier that totally surrounds the occupants and prevents contact with pesticides outside of the cab.

Enclosed cabs that provide respiratory protection must have a properly functioning ventilation system that is used and maintained according to the manufacturer's written operating instructions. To substitute for a label-required respirator, the enclosed cab must be declared in writing by the manufacturer or by a governmental agency to provide at least as much respiratory protection as the type of respirator listed in the pesticide labeling.

Examples:

Some enclosed cab systems provide respiratory protection equivalent to a dust/mist filtering respirator and could, therefore, be used as a substitute when that type of respirator is specified in the product labeling.

Other enclosed cab systems are equipped to remove organic vapors as well as dusts and mists and could be used as a substitute when either the dust/mist filtering respirator or an organic vapor removing respirator is specified on the product labeling.

The WPS provides that handler employers may allow handlers to omit some of the PPE listed on the pesticide on the pesticide labeling for a handling task if the handlers are using an enclosed cab:

1) In enclosed cabs that do not provide respiratory protection handlers need not wear all PPE listed on the pesticide labeling, but must wear at least:

- long-sleeved shirt and long pants,
- shoes and socks,
- any respirator required for the handling task.

2) In enclosed cabs that provide respiratory protection equal to the labeling required respirator handlers need not wear all the PPE listed on the pesticide labeling but must wear at least:

- long-sleeved shirt and long pants, and
- shoes and socks.

3) In any enclosed cab where reduced PPE is worn, handlers must:

- keep immediately available all PPE listed on the labeling for the type of task being performed,
- wear the PPE if it is necessary to leave the cab and contact pesticide treated surfaces in the treated area,
- take off PPE that was worn in the treated are before entering the cab, and
- store all PPE in a chemical resistant container such as a plastic bag, to prevent contamination of the inside of the cab.

NOTE: For pesticide applications utilizing an enclosed cab for uses outside the scope of WPS, follow the FIFRA compliance Program Policy 12.6, Enclosed Cab Use for Pesticide Applications. The Compliance Policy outlines slightly different conditions than the regulation. In addition, states may have additional requirements regarding the use of enclosed cabs. (February 24, 1994)

4-6(b) Open cabs

Question: Must an applicator, or other handler, performing handling tasks in a cab, i.e., tractor cab or truck cab, with the windows open wear all labeling prescribed PPE?

Answer: Yes, an applicator, or other handler, performing handling tasks in a cab, i.e., tractor or truck cab, with the windows open must wear all labeling prescribed PPE.

As discussed in the preceding question and answer, enclosed cabs must have a nonporous barrier that totally surrounds the occupants and prevents contact with pesticides outside of the cab. When the windows of the cab are open at any time during the handling activity, or the enclosure is otherwise breached, the cab is no longer considered enclosed and handlers would be required to wear the PPE required on the pesticide label for handlers of the product. (February 24, 1994)

4-7 When is a structure a greenhouse?

Question: If the sides of a greenhouse are constructed of porous cloth or other porous material is this structure considered a greenhouse?

Answer: No. The WPS definition of a greenhouse specifies that it is a structure enclosed with nonporous covering. Structures which are only enclosed with porous material such as cheesecloth or nylon screen are not considered greenhouses under the WPS. (February 28, 1995)

4-8 Is a structure a greenhouse; if windows and doors remain open during application

Question: If a greenhouse has windows or doors which remain open throughout an application, would this structure be considered a greenhouse?

Answer: Yes. Regardless of whether a greenhouse has windows or doors which are left open during the application, the structure is still a greenhouse and subject to the WPS provisions applicable to greenhouses. (February 28, 1995)

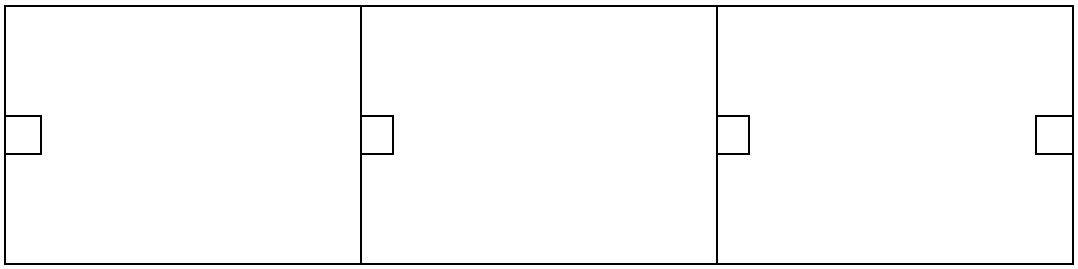
4-9 Is a structure a greenhouse; if walls are porous, or sides are removed

Question: Is a structure a greenhouse if some of its walls are porous or if some of its sides are removed?

Answer: If a greenhouse structure has sides/panels and a significant portion of the enclosure may be removed, such as large glass panels that are taken off, fiberglass or polyurethane walls which are moved up and down, sliding gateways that move back to essentially remove significant portions of the structure, or other similar apparatus where the non-porous sides/panels are removed, then such a structure would not be considered a greenhouse as long as the sides/coverings remain completely removed during the entire pesticide application and any applicable REI associated with the application is met. (February 28, 1995)

4-10 Greenhouses, one structure with 3 subenclosures

Question: Is the structure illustrated below considered 1 greenhouse or 3 greenhouses?



1 range with 3 sections separated by walls and doors

Answer: This structure is one greenhouse consisting of three subenclosures, except in the rare circumstance that each section, including all ventilation systems, can be completely sealed off from one another. This question is most important when fumigants are applied in a greenhouse. In that instance, the WPS (and the fumigant label) prohibit entry to the entire greenhouse (including any adjacent structure or building that cannot be sealed off from the treated area) by any person, other than a trained and equipped pesticide handler performing certain handler tasks. The prohibition extends until the entry criteria listed on the fumigant's labeling are met.

For non-fumigant pesticides, the WPS permits the use in greenhouses of sub-enclosures that need not meet the stringent criteria of being "sealed off" from the rest of the greenhouse structure. Sub-enclosures can be created for non-porous wall, including temporary walls consisting of intact, sturdy plastic or other non-porous materials, that restrict the movement of non-gaseous pesticides to the area within. Such a sub-enclosure constitutes the area that must be vacated during smoke, mist, fog, and aerosol applications and during applications for which the pesticide labeling requires the applicator to wear a respirator, and also constitutes the area that must be posted.

In addition, if the treated area is so enclosed, the 25-foot setback zones for certain other types of pesticide applications do not extend beyond the walls of the sub-enclosure. (February 28, 1995)

4-11 Coarse spray, applicability to Tables 1 and 2 in 40 CFR part 170.110

Question: For the purposes of the restrictions during application in greenhouses and nurseries, is a coarse spray defined as one produced with pressures less than 40 psi? If so, is a coarse spray one of the "otherwise" types of applications in Tables 1 and 2 in 170.110, i.e., those applications where workers are prohibited only in the treated area and not in the larger area of the greenhouse or nursery during application?

Answer: The term coarse spray is not used in the regulation and therefore not defined. An "otherwise" type of application is one that does not meet the criteria in Column A, Tables 1 and 2, at Section 170.110, and is irrespective of droplet size. (June 14, 1996)

4-12 What is the treated area, when pesticide spray is directed to the base of a tree

Question: What is the treated area when a pesticide is applied by directed spray to the base of a tree in an orchard? Will the whole orchard be off limits to early entry by workers?

Answer: The treated area is the area to which the pesticide is directed. An agricultural employer may designate what the restricted entry area is by the appropriate notice of application. It is this designated area, not the whole orchard, to which the restricted entry interval applies. (June 14, 1996)

4-13 Definition of enclosed cockpit

Question: How should an "enclosed cockpit" be defined, per CFR 170.240(d)?

Answer: An aircraft with an enclosed cockpit is defined as any aircraft with a windshield and adjoining canopy. Additionally, pilot points of entry and all windows must be closed. EPA recommends that, when possible and in accordance with Federal Aviation Administration regulations, air filters or positive pressure systems be installed on aerial application aircraft. (June 14, 1996)

4-14 Definition of contaminated aircraft

Question: The WPS requires the use of chemical resistant gloves to be worn by any person entering or leaving an aircraft contaminated by pesticide residues. How does EPA define the term "contaminated aircraft" as found in this provision?

Answer: For the purposes of 40 CFR 170.240(d)(6)(i), an aircraft will be considered contaminated any time after the aircraft has been used in applying a pesticide, even if there are no "visible" signs of contamination. The aircraft will be considered to be contaminated until such time that the aircraft has been rinsed or washed in a manner consistent with routine washing practices. The mixing and/or loading of pesticides into the aircraft mix tank shall not be considered to result in contamination of the aircraft as long as such mixing/loading is accomplished through a closed system or other mechanism that will not result in pesticide residues being deposited onto the aircraft. (June 14, 1996)

5 Entry Restrictions

5-1 State-established REIs

Question: If state-established REI's are put on labels, will early entry provisions apply?

Answer: If the label bears the WPS reference statement and a statement requiring compliance with a Restricted Entry Interval (REI), albeit one that was placed on the labeling to reflect a State-established REI, it is considered to be the restricted-entry interval required under FIFRA. Thus, the WPS provisions apply unless otherwise specified on the label. Please note that REI's on labeling must be reflected in the Federal registration of the product. If States impose an REI through State regulation which is not on the labeling, the State REI would not trigger the REI related provisions from the WPS. (March 22, 1993)

5-2(a) Irrigation activities

Question: Why are irrigation activities excluded from the definition of "hand labor" and yet only short-term entry is allowed?

Answer: Irrigation activities were excluded from the definition of "hand labor" in order to create a short term exception for such activities under the early entry provisions. Irrigation activities do pose exposure concerns, but the Agency recognized that these activities need to be done. The Agency requires protection from this exposure by limiting the amount of time a worker is allowed in the treated area and requiring the worker to wear PPE. (March 22, 1993)

5-2(b) Irrigation activities under an REI (continued)

Question: Under what circumstances can irrigation take place during a restricted-entry interval (REI) (40 CFR §170.112)?

Answer: WPS was designed to reduce the opportunities for workers to be exposed to pesticide residues in treated areas during REIs. For example, with the exceptions noted below, irrigation pipe may not be moved during REIs when that task would bring workers into contact with treated surfaces. As a result, agricultural employers should schedule pesticide applications and irrigation so that the need for irrigation involving workers during REIs will be minimized. If, however, irrigation in a treated area under a REI is essential, it is permitted under WPS under the following conditions:

(1) Without Entry to Treated Area -- Some irrigation tasks take place at the edges of fields, which may not be within the treated area (area to which the pesticide has been directed.) An example may be the installation or removal of pipe for furrow irrigation. As long as such activities do not cause workers to enter the treated area, they may take place without time limit or use of personal protective equipment (PPE) during the REI.

(2) With Entry to Treated Area:

a. By Pesticide Handlers -- During chemigation or when pesticide labeling requires the pesticide to be watered-in, this task may be performed by trained handlers wearing the handler PPE specified on the product labeling. [See the Question and Answer on watering-in, found in the Handler Activities section of this document, for additional details].

b. By Workers With No Contact -- WPS provides an exception for entry to treated areas, after any inhalation exposure level or ventilation criteria have been met, without PPE or other time limitation, when there will be no contact with the pesticide or its residues [40 CFR §170.112(b)]. Note, however, that PPE cannot be used to prevent the contact under this exception. This exception may apply to a variety of typical irrigation situations, e.g.:

- Workers moving irrigation equipment or performing other tasks in the treated area after the pesticide was correctly soil-incorporated or injected, provided the workers do not contact the soil subsurface by digging or other activities.
- Workers walking or performing other tasks in furrows after the pesticides are applied to the soil surface in a narrow band on beds and there is no contact with those treated surfaces.

c. Short Term -- Workers may enter treated areas during REIs to perform short-term tasks [40 CFR §170.112(c)] provided that:

(1) such entry does not take place during the first four hours after application and until any inhalation exposure limits or ventilation criteria are met;

(2) the entry does not involve more than one hour per day per worker;

(3) the worker does not perform tasks defined in WPS to be hand labor (operating irrigation equipment is not hand labor under WPS, as stated at 40 CFR §170.3 under the definition of hand labor);

(4) the worker wears the early-entry PPE specified on the pesticide labeling;

(5) is correctly informed as required for early-entry workers in the WPS; and

(6) all other applicable requirements of 40 CFR §170.112 are met.

d. Agricultural Emergencies -- The WPS permits early entry by workers to perform tasks including irrigation while wearing early-entry PPE, and without time limits, in response to an agricultural emergency, as defined in the regulation at 40 CFR §170.112(d).

e. EPA-Approved Exceptions -- Section 170.112(e) of WPS permits exceptions to the general prohibition on work in treated areas during REIs when EPA has approved a special exception. Exceptions may be requested of EPA as described in that section of the regulation. (February 25, 1994)

5-3 Wet plants vs. REIs

Question: Are agricultural workers allowed to enter a treated area when the plants are wet if/when the REI specified on the label has expired?

Answer: In the past, labels have contained statements that said that reentry could take place "when sprays have dried, dust has settled, and vapors have dispersed."

The Agency established a 12-hour minimum REI labeling requirement in the WPS for agricultural use products. In addition, individual products within the scope of WPS may bear specialized labeling that address moisture.

However, in the case of a WPS REI of x number of hours and in the absence of additional instructions regarding wet plants, the agricultural employer would not be in violation if workers enter the field when the agricultural plants are wet provided the REI specified on the label has expired.

An REI specifying after sprays have dried, dust has settled and vapors have dispersed may still appear on products not within the scope of the WPS or for uses that are not within the scope of the WPS. In this case, entry may occur only if the sprays have dried, dust has settled or vapors have dispersed. Note, for products with WPS and non-WPS uses on the label that bear both the 12-hour minimum REI and the sprays dried, dusts settled and vapors dispersed language, the label should clearly indicate which REI applies to which use. (November 7, 1994)

5-4 Potting soil in pots

Question: If potting soil is treated with a pesticide in one location in a nursery or greenhouse and then placed in pots and used to produce plants in another area of the nursery or greenhouse, is the treated area the soil and therefore any REI restrictions would continue to apply in the second location?

Answer: Yes. The treated area is the area to which the pesticide was directed. In this case, the soil in the pots is the treated area. Therefore, any REI and associated requirements would continue to apply after the application. If the treated area is moved in containers, the REI and associated requirements are in effect for the treated area. (See question 14.23) (February 28, 1995)

5-5 Potting soil, movement off site

Question: If the treated soil is sold (in the pots with the crop) and moves off site, do any REI and other treated-area restrictions apply?

Answer: No. If the treated area in a pot with the crop is moved off the agricultural establishment, it is no longer covered under WPS. Therefore, no WPS requirements will apply at the new location. However, any label specific non-WPS REIs or other labeling restrictions must be met. (February 28, 1995)

5-6 Moving containers during REI

Question: If the soil/plants in pots are treated, can the container be moved during the REI?

Answer: Yes, the container may be moved provided there is no contact with the treated area by workers. If only the soil is treated and not the pot along with the soil such as in an overhead spray, then any REI restrictions apply only to the soil which has been treated. Moving the pot without any contact with the soil would not be in violation of the REI. If plants are treated, a worker can move containers provided there is no contact with the plants or other treated surfaces, and pesticides cannot drop or drip onto the worker. If the pesticide application is directed at the container and plant, then both are considered the treated area and are subject to any REI restrictions. In either of the above situations, the notification requirements, found at 40 CFR 170.120, apply to the treated area whether it is the soil/plant or the soil/plant and pot. (February 28, 1995)

5-7 Greenhouses, spraying 12 inches from planting medium

Question: The 40 CFR part 170.110 lists entry restrictions for greenhouses and nurseries associated with pesticide applications. One criterion for determining entry restrictions is spraying at a height of greater than 12 inches from the planting medium. In greenhouses with hanging baskets, is the 12 inch height measured from the top of the medium?

Answer: Yes. (February 28, 1995)

5-8 Entry under an REI for no-contact activities

Question: May an unprotected worker enter a treated area under an REI immediately after the application if it is for activities with "no contact"?

Answer: Yes. An unprotected worker may enter a treated area immediately after the application is finished as long as any inhalation exposure level or ventilation criteria listed on the labeling has been reached, and he will have no contact with anything that has been treated with pesticide including pesticide residues on plants, on or in the soil, in water, or in the air. (March 7, 1995)

5-9 Greenhouse applications, when does REI begin

Question: Does the Restricted Entry Interval (REI) for a greenhouse application begin upon completion of the application (once the pesticide is no longer being distributed) or only after the ventilation criteria have been satisfied?

Answer: The REI begins upon completion of the application. The REI and ventilation criteria are independent of each other. No person, other than a properly trained and equipped handler may enter a greenhouse until the ventilation criteria, if applicable, have been met. [See 40 CFR part 170.110(c).] (March 7, 1995)

5-10 Irrigation in arid areas

Question: Does the WPS offer WPS flexibility to restricted entry intervals when growers use irrigation in arid areas?

Answer: No. Irrigation does not affect the definition of an arid area which is defined as less than 25 inches of rainfall a year. Thus, if the REI for organophosphates is 72 hours in arid areas, a grower could not use irrigation to reduce the REI to 48 hours. (March 7, 1995)

6 Equivalency Issues

6-1 Protocol for state regulatory equivalency

Question: Will EPA consider regulatory equivalency on specific worker protection elements if requested by a state? If so, what protocol must be followed?

Answer: The Federal worker protection standard sets a national minimum, with states permitted to set more stringent standards. While the regulation does not specifically include provisions for accepting regulatory "equivalency," we intend to use a common sense approach to assessing these issues on the basis of whether such differences should be approved if they provide equivalent or enhanced protections of workers and handlers as outlined below.

States which have their own worker protection regulations may have requirements which are: 1) identical to the Federal standard; 2) different than the Federal standard but the state requirements include strict compliance with the Federal requirements; or 3) different than the Federal standard and the state requirements do not include strict compliance with the Federal requirements but which may provide equivalent protection. Each of these scenarios are discussed below.

(1) Identical requirements - This scenario should present few, if any, problems. If questions arise regarding the interpretation of state regulations which are identical to the Federal regulations, the state should consult with the Regional office, in order to avoid conflicts between a state's interpretation of the regulation and EPA's interpretation of identical language. Issues not easily resolved should be elevated by the Regional Office to the Worker Protection Standard Interpretive Guidance Workgroup for resolution.

(2) Different requirements which include strict compliance with the Federal requirements - In this situation, the state may have different requirements which are more stringent than and which meet the Federal standard. In meeting the state requirement, a person automatically is in strict compliance with the Federal requirement. An example of this would be a state restricted entry interval (REI) of ten days imposed by state regulation (restricting entry to at least the same degree as the WPS) as compared to a Federal REI of three days. Compliance with the state REI also complies with, or exceeds, the Federal REI.

Questions which arise for this scenario usually involve whether or not a state requirement does include strict compliance with the Federal requirement. In those cases where a state is unclear as to whether or not compliance with the state requirement would include strict compliance with the Federal requirements, EPA will be available to discuss these issues with the state. Cases which cannot be resolved by the Regional Office may be elevated through the sublead Region to the Interpretive Workgroup for consideration.

(3) Different requirements which do not include strict compliance with the Federal requirements but which may provide equivalent protection - The worker protection standard does not provide for the imposition of

different requirements in place of the Federal requirements. In those situations where the state has different requirements which do not include strict compliance with the Federal requirements, the Federal requirements remain in effect in that state, as do the state requirements. States may find it useful to publicize a list of those provisions under EPA's worker protection standard which are not met by complying with state law.

However, in those situations where a state wants EPA to allow such a state requirement in lieu of a Federal requirement because the state believes that the state requirement provides equivalent or better protection, the state may make such a request. The EPA could allow this through an amendment to the regulations, or through programmatic interpretive guidance, or, in certain situations, through enforcement discretion. While it is possible to grant enforcement discretion, this is not usually done except on a temporary basis when the original rulemaking did not consider and address a particular issue and a more permanent solution is anticipated through an amendment to the regulation or modification to state law.

To request the Agency to undertake rulemaking, or issue interpretive guidance, or grant enforcement discretion, a request should be submitted which addresses: (1) specific provisions in the Federal regulation and the corresponding state requirements for which the state believes its approach provides equivalent or better protection; (2) why it believes that equivalent or better protection is provided under the corresponding state requirements; (3) any facts that it believes were not considered at the time of rulemaking; (4) any other information relevant to the need for the change; and (5) the impact if the requirement is not modified. The request should be sent to the Regional Office, who should then forward it to the sublead Region for submission to the Worker Protection Standard Interpretive Guidance Workgroup. The Workgroup will review the request and present it to EPA's management for consideration. (March 29, 1993)

6-2 California's use reporting requirements

Question: Do California's use reporting requirements meet the standards and intent of the Federal worker protection elements?

Answer: It is our understanding that this question deals with EPA's requirement to display application information in a central location and whether California's use reporting requirements would be considered as "equivalent." California's position is that they require records be kept by the grower and made available on request. It is our understanding that these records require the name of the pesticide. However, it is unclear whether this means the active ingredient(s) and/or the product (brand) name of the pesticide; the WPS requirements require listing the product (brand) name and active ingredient(s) of the pesticide. In addition, the California regulations do not require records on the Restricted Entry Interval (REI), as required to be displayed according to the WPS.

The issue of whether to require the display of application information as opposed to providing it on request was examined during rulemaking and responded to. Based on our understanding, the California requirement does not include displaying the information which is required under the Federal WPS. As discussed, displaying this information was considered a key element in assuring the information is easily available to workers.

As a result, California's existing requirement does not appear to fully satisfy either the WPS requirements or EPA's intent in developing the regulation. (March 29, 1993)

7 Exemptions/ Exceptions

7-1 Growers/owners applicability of WPS

Question: Are growers (owners) personally subject to the REI provisions, entry restrictions, and PPE requirements for early entry activities?

Answer: Yes, growers (owners) are personally subject to the REI provisions, entry restrictions, and PPE requirements for early entry, when using a product referencing the WPS. (March 22, 1993)

7-2 Exception requests, irrigation activities

Question: Will the Agency consider a request for approval for an exception to the 1 hour/24 hour requirement for irrigation activities?

Answer: Yes, the Agency will consider a request provided such a request is submitted pursuant to 40 CFR part 170.112(e)(1). (March 22, 1993)

7-3 Self-employed persons, applicability of WPS

Question: The definition of a "worker" includes a self-employed person. Does this mean that growers are required to comply with all provisions where they are not specifically exempt?

Answer: In general, self employed people who perform worker activities must provide themselves with the protections required for workers. However, if they qualify for the agricultural owner exemption, they are exempt from some provisions. (March 22, 1993)

7-4 Small establishments, applicability of WPS

Question: Are small agricultural establishments exempted from compliance with the Worker Protection Standard?

Answer: No. Except for a partial exemption for owners and their immediate families (immediate family includes only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters), all agricultural establishments that use pesticides that have WPS labeling must comply with the Standard when using those products for uses within the scope of the WPS. (March 22, 1993)

7-5 Exemptions to provisions on the label

Question: Section 170.120(a)(3) and (b)(3) exempts the employer from the label provisions for notification if the workers do certain activities. This appears to be in direct conflict with any label requirement and may confuse the regulated public as well as create enforcement problems. Please clarify the apparent conflict.

Answer: Your observation can best be clarified by referring to Section 156.206(b)(2) which states that "Each product shall bear the statement: "This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification and emergency assistance. It also contains specific instructions and exceptions pertaining to the statement on this label...about...notification to workers."

Therefore, the labeling would allow for exceptions in these cases. (March 22, 1993)

7-6 Moving contaminated irrigation equipment

Question: The definition of "hand labor" excludes the handling, operation or repair of irrigation equipment. Does this mean workers who move contaminated pipes do not have substantial exposure and are therefore exempt from the early entry restrictions?

Answer: No, they are subject to the early entry restrictions. However, note that there is a specific early entry exception called the "short term" exception for such activities. (March 22, 1993)

7-7 Wide-area public pest control programs

Question: Does the exception from WPS for "wide-area public pest control programs" extend to those cooperative programs in which the growers themselves make or arrange for pesticide applications to their crop areas?

Answer: No. The exceptions at 170.12(b)(1) and 170.202(b)(1) do not extend to those cooperative programs in which the growers themselves make or arrange for pesticide applications to their crops.

WPS clearly applies to applications made under the control of an agricultural employer "on an agricultural establishment in the production of agricultural plants," regardless of whether the applications are also part of a program involving a governmental organization. Examples of such applications are boll-weevil or gypsy moth applications which the growers themselves arrange for or make. (February 24, 1994)

7-8 Immediate family exemption

Question: Please explain the immediate family exemption, i.e., are wholly family owned agricultural establishments are exempt from the WPS; how does the immediate family exemption apply when there is more than one owner, related or unrelated?

Answer: Wholly family owned agricultural establishments must comply with the WPS. However, the revised final rule exempts owners of agricultural establishments from providing to themselves, and to members of their immediate family, some of the requirements of the rule. (40 CFR parts 170.102(c) and 170.202 (c))

The rule defines immediate family as including only spouse; children; step children; foster children; parents; stepparents; foster parents; brothers; and sisters. (40 CFR part 170.3)

In general, owners are exempted from providing themselves or members of their immediate family the following:

- safety training and information;
- providing, cleaning, and maintaining personal protective equipment;
- information at a central location;
- decontamination facilities;
- notification of pesticide applications; and
- emergency assistance.

A person does not qualify as an owner for purposes of the exemption if he/she has rented or leased out their farm, forest, nursery, or greenhouse to another person and has no part in the management of or profit/loss from

the establishment (in such a case, the person to whom the establishment has been rented is considered the "owner"), or if he/she has been hired to operate a farm, forest, nursery, or greenhouse and the person who owns the property shares in the profits or losses from the property. Persons who operate, but do not own, an agricultural establishment do not qualify for the exemption.

The exemption applies to owners without regard to whether the owner has incorporated or otherwise organized for business purposes.

In situations where two or more persons own an agricultural establishment, the exemption applies to the owners if each owner is related to every other owner as an immediate family member or as an in-law. In addition, all members of each owner's immediate family are eligible for the exemption.

Exception: If owner "A" is the parent of owner "B" and the grandparent of owner "C", all three qualify for the exemption as long as they are related to every other owner in one of the eligible relationships.

For example, the exemption will be available to a brother, sister, and the sister's spouse who jointly own an agricultural establishment. The owners need not provide some of the provisions required by the rule to themselves or to the children, parents, or siblings of each owner. Technically, under a very strict reading of the rule, the children of one of the partners would be nieces or nephews of the other partner and the corporation would not be allowed the immediate family exemption. However, in this type of example, the spirit of the immediate family exemption is still being met. Similarly, the exemption will not be denied if the ownership consists of a husband, wife and the wife's parents, or consists of a parent, child and grandchild.

In other words, when an agricultural establishment is owned by more than one person, the exemption is available to the owners ONLY if each owner is related to each other owner in one of the following ways:

- spouse,
- child, stepchild, foster child, son-in-law, daughter-in-law,
- parent, stepparent, foster parent, parent-in- law,
- brother, brother-in-law,
- sister, sister-in-law,
- grandparent-parent-grandchild exception explained above.

If the owners are each related to one another in one of the above specified ways, then the owners need not provide certain protections to themselves or to any member of any owner's immediate family.

In situations where all of the owners are not related in one of the above specified ways, e.g., two brothers and a neighbor; or the owners are the grandparent and grandchild when the parent of the grandchild is not also one of the owners, none of the owners qualifies for the agricultural owner exemption and each owner must provide all WPS protections to those persons not in their immediate families and to each other.

Although owners of establishments and members of their immediate family are exempt from some of the provisions of the rule, there is no reason they cannot follow those revisions and EPA encourages owners and family members to provide themselves and each other with these protections. These individuals also need to recognize that they are obligated to follow the other applicable provisions of the rule, including product-specific requirements on pesticide labeling such as restricted entry intervals (REIs) and personal protective equipment (PPE). Finally, if an owner employs both family members and non-family members to work on the agricultural establishment, the owner must provide the non-family members with all of the protections included in the rule.

NOTE: This interpretation is consistent with the exemption for family business under the Department of Labor's Migrant and Seasonal Agricultural Workers Protection Act (MSPA). (February 24, 1994)

7-9 Fire ant control/quarantine, potting soil

Question: Does the exception from WPS for "wide-area public pest control programs" extend to the treatment of potting soil as part of a fire ant control/quarantine program?

Answer: No. The WPS does apply to the treatment of potting soil for fire ant control/quarantine programs. The wide-area public pest control exception does not extend to cooperative programs in which the growers themselves make or arrange for pesticide applications. WPS applies to applications made under the control of an agricultural employer "on an agricultural establishment in the production of agricultural plants", regardless of whether the applications are also part of a program involving a governmental organization. (See the question and answer on wide-area public pest control programs, 7.16) (February 28, 1995)

7-10 Agricultural emergencies, is SLA only agency with authority to declare emergency

Question: Is the State Pesticide Lead Agency the only agency with the authority to declare the circumstances that could cause an emergency under the provisions found in section 170.112(d)?

Answer: No, the State Lead Agency for pesticides is not the only agency with the authority to declare the circumstances that could cause an agricultural emergency, but it is the agency responsible for determining if compliance has occurred. (March 15, 1995)

7-11 Agricultural emergencies, who can declare one when there is no clear authority

Question: For those situations where there is no agency with the authority over the circumstances that could cause an agricultural emergency, who can declare that circumstances exist that could cause an agricultural emergency?

Answer: If there is no separate agency with jurisdiction, the authority rests with the State Lead Agency responsible for pesticide programs. For situations where the heating or cooling system goes off in a greenhouse, the emergency arises not from the system going off but from the outside temperatures and for which the National Weather Service has jurisdiction. Thus, there is an agency with jurisdiction in such a situation. (March 15, 1995)

7-12 Agricultural emergencies, can SLA require documentation of emergency

Question: Can the State Pesticide Lead Agency require documentation of an agricultural emergency?

Answer: The Federal WPS does not require records to document the agricultural emergency. A State may promulgate regulations under State authority to require documentation. (March 15, 1995)

7-13 Agricultural emergencies, is there a violation if workers enter and emergency does not occur

Question: If a circumstance which could cause an agricultural emergency such as a freeze is predicted, and it does not occur, is there a violation if the agricultural employer sends workers into the treated area during an REI?

Answer: No, there is no violation provided all other conditions in part 170.112(d) are met. There would be a violation if the employer sends workers in after he knows the circumstances are no longer in existence. (March 15, 1995)

7-14 Agricultural emergencies, may SLA declare circumstances which constitutes an emergency

Question: The regulation provides for an exception to the entry restrictions for an agricultural emergency at section 170.112(d). Along with other criteria that the agricultural employer must meet, one criterion is that a State, Tribal, or Federal Agency having jurisdiction declares the existence of circumstances that could cause an agricultural emergency on that agricultural establishment. May a State Lead Agency identify conditions which would constitute an agricultural emergency and set up procedures to avoid having to make the declaration on a case by case basis prior to the exception being utilized?

Answer: Yes. The State may handle the declaration of circumstances that could cause an agricultural emergency on an agricultural establishment in a number of ways. The State could declare through guidance or regulations the circumstances that could cause an agricultural emergency and for which early entry would be allowed provided the circumstances occur or are predicted to occur.

Please note that even if guidance or regulations are developed, the agricultural employer must ensure that the other requirements for this provision are also met prior to sending workers into the treated area before the end of the restricted entry interval, e.g., the agricultural emergency could not have been anticipated, the employer would suffer a substantial economic loss without entry, and that no alternative practices could have prevented or mitigated a substantial economic loss, as defined in the WPS. EPA is willing to work with the States to develop this guidance. (March 15, 1995)

7-15 Exemptions for workers entering a treated area, applicability to pesticide handlers

Question: Do the requirements/exemptions for workers entering a treated area before an REI expires set out in section 170.112 also cover pesticide handlers since they are defined in the standard as persons who apply pesticides and may have to go into fields under an REI?

Answer: No. Pesticide handlers (employees applying, mixing, or loading pesticides, cleaning, repairing, etc.) may enter fields during an REI provided label-specified PPE is worn and the activity being performed is a handler activity. (June 14, 1996)

8 Generic Requirements

8-1 Access to the 40 CFR part 170 requirements

Question: How will employers and applicators have access to the Part 170 requirements that are not specified on the label?

Answer: It is the responsibility of the employer to comply with the regulation. However, we believe our efforts to widely disseminate information about the regulation will facilitate compliance with the requirements of the regulation.

In addition, the Agency is preparing a "How To Comply" manual, which is an "everyday English" version of the worker protection standard. This manual is designed to contain everything that an affected employer will need to

know in order to comply with the 1992 WPS. GPO will print and sell the manual. Also, several private organizations have indicated they intend to print and sell copies of the manual. (March 22, 1993)

8-2 Transportation to medical facility

Question: Is an agricultural employer in violation of the WPS if he refuses a worker transportation to a medical facility if to the best of the employer's knowledge, the worker's symptoms do not suggest pesticide poisoning?

Answer: Yes, provided that a product with WPS labeling has been used and exposure to the worker could have occurred on the agricultural establishment, and there is a claim of pesticide poisoning or injury by exposure to pesticides. The Agency considers this situation to be sufficient reason to believe that the worker may have been poisoned. Thus, transportation to a medical facility needs to be made available by the agricultural employer.

Please note that while a worker's symptoms may not suggest pesticide poisoning to the employer, there are many symptoms of pesticide poisoning that could be misconstrued with the symptoms of other illnesses, e.g., the flu. (February 28, 1995)

8-3 Return transportation from medical facility

Question: Is an agricultural employer required to provide return transportation from a medical facility to a worker?

Answer: No. The WPS requires that the agricultural employer make available transportation from the place of employment to the medical facility. It does not require that transportation be provided back to the place of employment. (February 28, 1995)

8-4 Who pays for transportation to medical facility?

Question: When transportation is required for emergency assistance, who is responsible for paying when there is a charge for the transportation--the employer or the employee?

Answer: The employer is responsible for providing transportation, which would include paying when there is a charge for transportation. (March 15, 1995)

8-5 Agricultural employer transportation requirements for migrant workers

Question: The regulations pursuant to the Migrant and Seasonal Agricultural Worker Protection Act (29 USC 1801 et seq.), as amended, set forth specific requirements that agricultural employers must meet before transporting migrant or seasonal agricultural workers. The regulations are apparently applicable to any employer who transports workers. The WPS requires agricultural employers to provide emergency transportation for a worker under certain circumstances. This is an apparent conflict as this may cause an employer to be in violation of the above Act if they transported a worker in a vehicle that did not meet the safety/insurance requirements set forth in the pursuant regulations. How will agricultural employers comply with the emergency transportation requirements of the WPS without violating another existing Federal regulation?

Answer: There is no conflict in the above mentioned regulations. Agricultural employers must comply with all applicable Federal and State laws and regulations pertaining to their operations. The WPS requires agricultural employers to "make available" emergency transportation for employees under certain circumstances. An

agricultural employer must also comply with other laws or regulations that may govern the transportation of workers. (June 14, 1996)

9 Handler Activities

9-1 Watering-in

Question: When a pesticide product's labeling contains directions for watering-in (or indicates that irrigation should take place) after application, may watering for that purpose be performed by handlers under WPS?

Answer: When a label requires or advises watering-in of a pesticide it is considered to be part of the application. Entering a treated area to water-in when the label requires or advises it is a form of soil incorporation that may be performed at any time by trained handlers wearing the handler PPE specified for the pesticide on its labeling and provided with other handler protections. Handlers may perform such watering-in tasks in the treated area and without time limit when it is required or advised by the label. Although watering-in may be done through irrigation, it is important to note that routine irrigation of crops is not considered to be a handler task under WPS. (February 25, 1994)

9-2 Access to product labeling

Question: The preamble discussion on 40 CFR part 170.232 does not require the employer to make multiple copies of the label or the handler to carry a copy of the label during the handling activity. What are the requirements of "access to the product labeling information during handling activities?"

Answer: The Agency interprets this phrase to mean that the product labeling information is accessible to the handler for reference should the handler have questions about the handling, mixing or application of the product or need to seek further information on the product. This does not mean that the handler must carry a copy of the product label. It does mean that the handler should know where to find a copy of the product label information and that the product label information is available to the handler during the time he is performing handler activities. (March 7, 1995)

10 Labeling Issues

10-1 Compliance with language referred to on labeling

Question: Section 2(p) of FIFRA states that current official publications of EPA are not labeling. The new WPS regulations appear to be official publications in that they are printed in the FR and therefore cannot be considered "labeling." Please elaborate on this issue.

Answer: The label specifically states in the Directions for Use section that users must comply with the WPS. Therefore, a violation of the WPS would be use inconsistent with the label. Thus, because we are basing enforcement of the WPS on the fact that compliance with the Standard is required by a use direction on the label, it is not material whether the WPS itself is, or is not, considered labeling. (March 22, 1993)

10-2 Old versus new label requirements

Question: If a user has possession of both an old product (i.e., without the WPS statements) and a label with the new standards, which PPE requirements apply?

Answer: When using a product which does not bear the WPS reference, the label of the product being used applies and compliance with the WPS is not required. Please note that the label on the product at the time it is sold/distributed is the governing label. If products are being combined, e.g., in a tank-mix, and one product bears the WPS reference and the other does not, the more stringent requirement must be met. Following the WPS requirements in addition to the label requirements would not cause a violation. (March 22, 1993)

10-3 Sale and use of non-WPS labeled products after October 23, 1995

Question: A pesticide dealer operates a pesticide application service out of the same establishment. The total bill for the application services usually includes the cost of the pesticides (obtained through the dealership) and the fee for application, but they are separate line charges on the bill. If the dealer continues to apply non-WPS labeled products commercially in this manner after October 23, 1995, does this constitute illegal sale of and/or distribution of a pesticide?

Answer: No product to which WPS applies may be sold or distributed without WPS labeling after October 23, 1995. Applying a registered pesticide for hire is not sale and distribution under FIFRA provided that the product is applied by the dealer or his employee and none is left behind for the customer. Therefore, if an applicator applies a registered non-WPS labeled pesticide after October 23, 1995, this will not constitute illegal sale and distribution of a pesticide based on its lack of WPS labeling. This is true regardless of the billing provided the product was correctly labeled prior to the required dates and is not a bulk pesticide delivered after April 21, 1993. (Bulk pesticides are subject to the dates applicable to registrants.) (March 7, 1995)

11 Notice of Application

11-1 Premises, definitions

Question: Section 170.120(d) requires notification before an application "If a worker will be on the premises during the application..." What is the meaning of "premises"?

Answer: The term "premises" means the agricultural establishment. (March 22, 1993)

11-2 Oral notification

Question: Under section 170.120(d) how close to a treated area must a worker be for oral notification to be given?

Answer: An oral warning must be given:

On farms, forest, or nurseries - to any worker who may be in a treated area or walk within 1/4 mile of the treated area during a pesticide application or while an REI is in effect;

In greenhouses - to any worker who may be in a greenhouse during a pesticide application there or while an REI is in effect in that greenhouse. (March 22, 1993)

11-3 Adjacent properties

Question: In cases where different property owners have treated areas adjacent to each other, are they both required to notify workers if they are within 1/4 mile of both properties?

Answer: No, the rule requires agricultural employers to notify only their own worker-employees. (March 22, 1993)

11-4(a) Notification of application

Question: The WPS requires that employers of pesticide handlers provide information to the agricultural employer about the pesticide before it is applied. What provisions apply if the pesticide cannot be applied as scheduled?

Answer: Section 170.224 of the WPS requires that specific information be provided by the handler employer to the agricultural employer about pesticide applications on the agricultural establishment before the application has taken place so that the agricultural employer can in turn provide appropriate protection to his workers and family. The Agency is aware, however, that some applicators may on occasion not be able to perform pesticide applications at a previously-scheduled time. The How-to-Comply Manual provided some flexibility on this issue, noting that "if the pesticide is not applied as scheduled, the agricultural employer must be informed of the corrected time and date of the application. Make the correction before the application takes place, or as soon as practicable thereafter." Questions have arisen concerning the notification requirements if applications do not take place as scheduled, including when and how the employer must be notified of the change.

The WPS places certain requirements upon agricultural employers. One of the most important requirements involves keeping workers out of treated areas during applications and while the REI remains in effect, and providing workers with (among other things) information, protective equipment, and decontamination supplies when they enter treated fields within thirty days of expiration of the REI. The requirement for applicators to notify agricultural employers before an application takes place must be viewed in light of its central purpose: to provide employers with information they may need in order to provide protection to agricultural employees.

The obligation of employers to assure that workers remain out of treated areas during applications and while the REI remains in effect, and to assure that proper protection are provided when workers enter treated areas within thirty days of expiration of the REI, is not affected by the notification provision; the obligation of the employer continues whether or not notification of an application occurs. The employer should therefore take whatever steps are necessary to assure that he/she is informed of an application before workers might enter treated areas.

Obviously, notification prior to application is the best means to assure that the employer has the necessary information to provide protection to his/her agricultural employees. For this reason, the WPS requires that notification take place prior to applications. Applicators are liable under the WPS if they fail to provide such notification.

EPA recognizes that there may be circumstances where an application does not take place when scheduled, and where communication between applicator and agricultural employer may be difficult to accomplish. The Agency is therefore willing to allow some rescheduled applications to go forward without requiring prior notification of the rescheduled application. This flexibility is available only in circumstances where an application has been previously scheduled (including day, date, and time) and agreed upon by the applicator and agricultural employer, the prior notification required by the WPS has been provided, and the pre-arranged application subsequently does not take place as scheduled. Notification by the handler employer to the agricultural employer of the application must occur as soon as practicable after the rescheduled application, and must occur within 24 hours of the rescheduled application.

Applicators and employers must keep in mind that the agricultural employer is still liable if employees enter fields during the REI, or within 30 days of expiration of the REI if any applicable WPS requirements are not met.

Notification must either be received by the agricultural employer before workers could be exposed to pesticide residues resulting from the application in violation of the WPS or the applicator must have notified the employer with a form of notification previously agreed upon by the applicator and agricultural employer which was reasonably calculated to get information to the employer before workers could be exposed to residues in violation of the WPS.

EPA strongly recommends that applicators and employers workout in advance between themselves how notification of regularly scheduled applications should be accomplished, under what circumstances applications may take place without prior notification if previously scheduled applications do not occur on time, and how notification of rescheduled applications should be accomplished. (February 28, 1995)

11-4(b) Notification of application, information regarding application

Question: Section 170.224 of the WPS requires that before the application of any pesticide on an agricultural establishment, the handler employer must provide or must assure that any agricultural employer for the establishment is aware of certain information regarding the pesticide and the application. For purposes of section 170.224 of the WPS, what constitutes compliance with this requirement?

Answer: EPA recommends that the agricultural employer and the handler employer agree on a notification process that will ensure that workers will not be in an area while it is being treated or under an REI. For example, the employers could agree:

- that without prior mutual agreement, an application will never occur before the scheduled time, and
- the agricultural employer will not permit workers into the area to be treated until he/she receives notification from the handler employer that:

  (a) either the application will not take place until a specified future time at the earliest, or

  (b) the application has taken place and specific information required by Section 170.224 is provided to the agricultural employer.

Examples of compliance:

(1) An oral exchange of the required information between the handler employer and agricultural employer prior to an application would comply with the notification requirements of the WPS;

(2) Leaving a complete message on a telephone answering machine prior to the application would constitute compliance if the message was actually received by the agricultural employer prior to the application.

(3) Leaving a complete message on the answering machine prior to the application would constitute compliance if the handler employer and agricultural employer had agreed that by leaving a complete message on the answering machine notification could be accomplished. In this example, the handler employer would have satisfied his/her obligations under the WPS even if the message was not checked by the agricultural employer prior to the application. The employer, however, would remain responsible if workers were sent into treated areas in violation of any portion of the WPS. (February 28, 1995)

11-4(c) Notification after application

Question: If the initial notification of an application cannot be made because of difficulty in reaching the agricultural employer, can notification be made after application?

Answer: No. There are no provisions for allowing notification after application due to difficulty in contacting the agricultural employer initially. (February 28, 1995)

11-5 What is the treated area?

Question: In some areas, fields are so large that it may take days to treat the entire field. What is the "treated area" then, the whole field, or just the part treated each day?

Answer: The treated area is the portion of the field where the pesticide is directed. Employers may choose to designate only the areas being treated that day or previously treated as the treated area. Areas designated as treated and still under the REI requirements need to be posted if posting is required by the product labeling or the agricultural employer chooses to use posting as the means of notifying workers working within a quarter mile of the treated area. The whole field may be posted, but the field must remain posted until the REI expires for every section of it or specific posting is done for the sections remaining under the REI. Worker entry, other than that permitted under 40 CFR part 170.112, is prohibited for the entire posted area while the fields are posted. Posting of untreated areas may be deferred until the day that treatments will occur. (February 28, 1995)

11-6 Timing of notification

Question: How soon before an application must a handler employer provide the information to the agricultural employer as required by 170.224?

Answer: The WPS requires in 170.224 that the information be provided by the handler employer to the agriculture employer any time before the application takes place. (February 28, 1995)

12 Personal Protective Equipment (PPE)

12-1 Enclosed cabs

Question: Section 170.240(d)(5) specifies that enclosed cabs can be substituted for certain label-required PPE. This regulation allows either the manufacturer or a governmental agency to declare respiratory protection equivalency. This standard allows "self-certification" by the enclosed cab manufacturer and appears to be less restrictive than that provided by EPA Compliance Program Policy No. 12.6 that provides for state approval of such cabs upon the submission and review of data. Please explain the reason and purpose for the change between the policy and regulation. How can enforcement agencies, handlers, or employers be assured there is an adequate protection factor for manufacturer-certified cabs? In addition to the protection equivalency, must these engineering devices also meet the descriptive "definition" of enclosed cabs? The Department is aware of at least one manufacturer that has stated their intention to self-certify a cab that we believe does not meet the basic federal definition of an enclosed cab. The Department does not have any data on the respiratory protection factor accomplished by this cab.

Answer: The Federal regulation does allow for self-certification by enclosed cab manufacturers. The Agency made this a performance based standard in order to reduce the burden to states by not requiring licensing and

certification by states. States, however, can certainly be more restrictive and prohibit self-certification under state authority. (March 22, 1993)

12-2 Chemical-resistant footwear

Question: Section 170.240(6)(i-iii) specifies the types of chemical-resistant footwear that may be worn. What is the difference between "chemical-resistant shoes" and "chemical-resistant boots"? If footwear has a rubber bottom and leather upper, is it considered a chemical-resistant shoe or boot?

Answer: This language allows the use of chemical-resistant shoes rather that requiring the use of high-top boots. Footwear with leather uppers would not be considered chemical-resistant. The entire shoe or boot must be chemical-resistant. (March 22, 1993)

12-3 Protective eyewear

Question: Can the protective eyewear provision of section 170.240(c)(7)(i-iv) be applied to current product labels that state something such as "wear goggles or a face shield"?

Answer: No, the Worker Protection regulation only applies to products whose labels reference the WPS. (March 22, 1993)

12-4 Clean changes of clothes

Question: How many clean changes of clothes are required to be at a handler decontamination site?

Answer: The handler employer must provide one clean change of clothes at each decontamination site for use in an emergency. This change of clothes may be one-size fits all coveralls. The requirement for one clean change of clothes is not for each handler but for each site, and is irrespective of the number of handlers at the work site. (40 CFR 170.250) (March 22, 1993)

12-5 Eye protection for dilute formulation

Question: If a product is being applied for which the label requires eye protection because of the hazard of the concentrated formulation, and the diluted formulation does not pose the same hazard, is eye protection required for the persons using the diluted formulation?

Answer: The answer depends on the labeling. Products may provide separate instructions for PPE for activities involving the concentrate. If such a distinction is made, the label(ing) would state the PPE that is required for mixing and loading and also for handling activities. If the label(ing) makes no distinction, the protective eye-wear listed on the label(ing) must be worn for all handling activities involving either the diluted or undiluted product. (February 28, 1995)

12-6 Disposal of drenched clothing

Question: Are drenched clothing in this rule which must be disposed of required to be disposed of according to RCRA?

Answer: Drenched clothing may have to be disposed of according to RCRA regulations. The requirements depends on the individual circumstances. Appropriate State hazardous waste officials should be contacted for information on specific requirements. (March 7, 1995)

12-7 Applicability of enclosed cab restrictions

Question: Once PPE is worn in a treated area, it may not be worn into or taken into a cab. Does this prohibition also apply to mixers and loaders of pesticides driving application equipment?

Answer: Yes, the prohibition applies assuming that the application equipment in question is referring to the enclosed cab exception provision under the rule, [section 170.240(d)(5)]. If the mixers and loaders are driving application equipment, they are subject to the same requirements as the applicator regarding the enclosed cab and PPE. (March 7, 1995)

12-8 Enclosed cabs, exiting cab for no-contact activity

Question: If an applicator must exit his enclosed cab during an application, is he required to wear any PPE including a respirator, if he will not contact any pesticide treated surfaces in the treated area?

Answer: During the application, the applicator must wear the PPE required on the label(ing). Handlers must wear PPE when leaving the cab only if they will contact pesticide-treated surfaces in the treated area or if label specific prohibitions apply. They may leave the cab for a rest stop or other reason (other than handling pesticides) without wearing PPE if they will not be in contact with pesticide-treated surfaces in the treated area. The applicator may leave the cab and walk away from the just-treated area without PPE. (March 7, 1995)

12-9 Storage of PPE "apart" and "away"

Question: The rule requires that all clean PPE be stored "apart" from the pesticide contaminated area. It also states that workers have clean places "away" from pesticide storage and use areas to store their clothing not in use, etc. From an enforcement standpoint, what is meant by the terms "apart" and "away"?

Answer: The objective for this provision is to assure that clean PPE and personal clothing will not come in contact with pesticide residues. As long as the employer can assure that changing of clothes and storage of PPE occurs in an area separate from pesticide storage and use areas (including mixing and loading) so that these activities will not result in personal clothing or PPE coming into contact with pesticide residues, then the employer has met the criteria for "apart" and "away."

Ideally, this requirement may be met by providing a separate room for storage of PPE and changing activities; but there are a number of other ways of achieving compliance provided that pesticide residues do not come into contact with the PPE or personal clothing such as storing PPE in sealed containers. (March 7, 1995)

12-10 Heat stress; prevention when wearing PPE

Question: The requirement that employees wear PPE during application and the REI might pose a greater health risk from heat stress than pesticides themselves. How will this be handled?

Answer: Under WPS, employers have a responsibility to ensure that handlers and early entry workers: 1) wear the required PPE while in the treated area; 2) are not allowed or directed to perform activities without implementing measures to prevent heat stress; and 3) are trained in a manner they can understand in how to prevent, recognize

and treat heat-related illness. EPA has developed A Guide to Heat Stress in Agriculture which provides guidelines on preventing heat stress.

NOTE: Entry during an REI is permitted only in strictly limited circumstances/exceptions. (June 14, 1996)

13 Posting signs/Display of Information

13-1 Modifications to posting signs

Question: Do states have authority to adopt their own posting sign format or require additional information?

Answer: States cannot modify the WPS required elements of the signs. However, additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the appearance of the sign or change the meaning of the required information. Please note that this issue was considered during the rulemaking process and is addressed in the Response to Comments Document prepared by EPA. (See excerpt from "Worker Protection Standards: A Summary of the Public's Comments and the Agency's Response."). (March 22, 1993)

13-2 Colors of the posting signs

Question: How many different colors on white are required to meet the posting sign requirements? Can red be the only color on a white background?

Answer: White is not necessarily required, although the background color must contrast with red, which is required for the inner circle. Two-colored signs could meet the requirements as long as red were one of the colors. Therefore, red could be the only color on a white background provided the other requirements regarding contrast, legibility, etc. outlined in the rule are met. (March 22, 1993)

13-3 Language requirements on signs

Question: Are the application information provisions of section 170.122 and safety poster information in section 170.135 required to be in a second language?

Answer: No, the application information provisions of section 170.122 and the safety poster information in section 170.135 do not need to be in a second language. Note, however, the EPA produced safety poster will be in English and Spanish. (March 22, 1993)

13-4 Posting signs location requirements

Question: Section 170.122 requires the display of certain information when workers are on an establishment where pesticides have been applied. Does this mean anywhere on the agricultural establishment? Does it apply only to a contiguous property?

Answer: (First question) Yes, whenever workers or handlers employed by the agricultural establishment are anywhere on that establishment, certain information must be displayed.

(Second question) No, it does not necessarily apply only to contiguous property. It applies anytime they are anywhere on the agricultural establishment. (March 22, 1993)

13-5 Method of display of application information

Question: WPS requires employers to "display" specific information about pesticides for 30 days after their application on the agricultural establishment or the expiration of any Restricted Entry Interval. Does this mean that the information must be displayed like posters, so that all the information is in view at once, or may the information be displayed on sheets of paper that are in a binder or in another convenient manner?

Answer: WPS requires that the information on applications be accessible, legible, and displayed in a central location on the farm, or in the nursery or greenhouse (or in or near a forest, where workers or handlers are likely to congregate or pass by) "where it can be readily seen and read" by workers [40 CFR §§170.122 and 170.135] and handlers [40 CFR §§170.222 and 170.235]. It also requires that workers and handlers be informed of the location and allowed access to it. EPA used the word "display" to indicate that this access must be unrestricted in that it need not be requested. However, any manner of display that meets these criteria is acceptable, including such approaches as page-on-page lists stapled at the top and use of devices such as clipboards or binders. (February 25, 1994)

13-6 Posting after containers have been sold

Question: The regulation at section 170.122 and 170.222 requires posting of information on pesticide applications at a central location for at least 30 days after the expiration of REI (or, if there is no REI, for at least 30 days after the end of the application), or until workers are no longer on the establishment, whichever is earlier. If treated soil is sold (in the pots with the crop) and is moved off the agricultural establishment (i.e., no longer under the control of the agricultural employer), does the application list have to remain posted at the agricultural establishment where pesticide treatment occurred?

Answer: Yes, the application list must be displayed for at least 30 days after the expiration of REI (or, if there is no REI, for at least 30 days after the end of the application), or until workers are no longer on the establishment, whichever is earlier. It is acceptable to note on the list that the treated area (treated plants/soil) is no longer on the agricultural establishment. (February 28, 1995)

13-7 Pesticide application list, harvested crops

Question: If a crop is harvested and sold and the remaining stubble is plowed under, does the application list at the central location still have to contain a listing of applications to that crop? What if another crop is planted in that area within a 30-day period?

Answer: Yes. The list of applications posted at the central location would have to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment. If another crop is planted within the 30-day period, the list of applications to the previous crop would still have to be displayed as well as any information on pesticide application to the new crop. (February 28, 1995)

13-8 Pesticide application list, non-WPS labeled product

Question: If a grower buys a WPS labeled product and non-WPS labeled product, is he required to list any applications of the non-WPS labeled product on his centrally located information sheet concerning applications of pesticides?

Answer: No. He is required to list only applications of WPS-labeled products. Nonetheless, the Agency encourages growers to display information on all applications as a matter of providing protection to the workers. (February 28, 1995)

13-9 Posting of private forest land

Question: If a person owns private forest land that the public frequently enters, does he have any responsibility to post this land prior to or after the treatment with a pesticide?

Answer: The fact that the public enters does not trigger the WPS requirement for posting. The WPS does prohibit an agricultural employer from allowing any person to remain in the area during the pesticide application.

In addition, there are specific labeling statements which prohibit the application of the product in such a manner that will contact persons either directly or through drift. Also, there may be non-WPS label specific or additional state or local requirements that are applicable. (March 7, 1995)

13-10 Posting areas with unlimited entry points

Question: If a treated area has unlimited entry points, how often should treated-area warning signs be posted to be "visible from all usual points of entry?" Every 100 feet?

Answer: The rule requires that signs be visible at all usual points of worker entry, including at least each access road, each border with any labor camp adjacent to the treated area, and each footpath and other walking route that enters the treated area. If there are many usual points of entry, then signs must be visible from all usual points of entry. When there are no usual points of worker entry, signs must be posted in the corners of the treated area or a location affording maximum visibility. In areas where there are unlimited points of entry, the agricultural employer must determine the usual points of entry and make signs visible from those points of entry. (March 7, 1995)

13-11 Central posting, large or non-contiguous sites

Question: What is required for central posting when an agricultural establishment is particularly large or has separate workforces on non-contiguous sites?

Answer: The rule requires that certain information (30-day listing of pesticide applications and associated REI's, safety poster, and emergency medical care information) must be displayed in a central location on the agricultural establishment, in a place accessible to workers and handlers. EPA anticipated that there would be one central posting location on the agricultural establishment. However, if because of the size of the establishment or the separate nature of the workforce, there is not one central location that is accessible to all workers, then an employer will need more than one central posting to comply with the accessibility requirement in the rule. By accessible, EPA means that the information must be in a location where it can be readily seen and read and must be unrestricted in that it need not be requested. (March 15, 1995)

13-12 Updating central posting information

Question: Potting soil/plants may be treated with a pesticide in one location and then be moved either during the REI period or during the 30 days after the end of the REI. If they are moved, does the central posting information have to be updated to reflect the current location?

Answer: To meet the requirement of the regulations, the central posting information must remain reasonably accurate during the 30 days after the REI, or if none, for 30 days after the application, so that a worker will be able to determine which pesticides may be present in areas he will enter. Meeting this performance standard can be accomplished in a number of ways, including: 1) updating the information; or 2) providing the initial information in such a way that it addresses any likely changes to the location of the treated area (the pots); or 3) in addition to providing the initial location of the pesticide application, referring in the posting to markings or to other identifiers on/with the pots that remain with them as they move; or 4) in some other systematic manner that the employer chooses to use to assure that the information remains reasonably accurate. This list of examples is not exhaustive. (March 15, 1995)

13-13 Use of smaller signs

Question: The WPS Rule states that the warning sign shall be at least 14 inches by 16 inches in size, and the letters shall be at least 1 inch in height unless a smaller sign and smaller letters are necessary because the treated area is too small to accommodate a sign of this size. The example provided in the How-to-Comply Manual is when a single potted plant needs posting. Are there other circumstances in which smaller warning signs can be used?

Answer: The intent of the rule is to grant flexibility when a smaller sign would be more appropriate or practical based on spatial limitations of the treated area. For example, the use of the 14 by 16 inch signs may be impractical for individually potted plants, small treated areas on greenhouse benches or in closely spaced plots in nurseries/greenhouses or on farms where crops requiring different treatment regimes are grown in close proximity to one another. In such cases, smaller warning signs are permitted as long as they are readily visible and legible, as one approaches the treated area, and that they are not obscured from view by foliage. It is expected that the smaller warning signs will generally be used in greenhouses and nurseries. The smaller warning signs must conform with all the requirements applicable to the 14 by 16 inch warning sign with the exception of the size requirement. The signs must be of sufficient size and adequate construction to remain visible and legible during the time they are posted. To assure this, all posted warning signs must be constructed in such a way that would prevent them from drooping or wrapping around their supports. Since some States may adopt more restrictive requirements, and not choose to permit the use of smaller warning signs, an employer should check with their State agency responsible for worker protection to verify the State's policy on posting. (June 14, 1996)

14 Scope

14-1 Persons other than workers, and WPS

Question: In several sections reference is made to "...any person" or "persons." Do these apply only to workers or to everyone? (See section 170.110 vs. Table 1 B)

Answer: The language of the rule (170.110(b) and (c)) clearly states that the restrictions on entry associated with applications in nurseries and greenhouses apply to any persons, other than an appropriately trained and equipped handler. This means it applies to non-workers as well as workers. (March 22, 1993)

14-2(a) Prisons, coverage by WPS

Question: Are prisons subject to the requirements of the WPS?

Answer: There is nothing in WPS that exempts prisons from the duty to comply with WPS. WPS protections must be provided to pesticide handlers and agricultural workers any time a pesticide product bearing WPS labeling is used on an agricultural establishment in the commercial or research production of agricultural plants. Whether a

particular prison meets the definition of an agricultural employer or handler employer or is an agricultural establishment engaged in the commercial or research production of agricultural plants will have to be established on a case-by-case basis, as will whether a prisoner is an agricultural worker or pesticide handler. Factors to be considered include whether the prisoner is receiving any form of compensation and whether the production of agricultural plants is for commercial or research purposes.

Regardless of the determination of whether the prison is an agricultural or handler employer or is an agricultural establishment, EPA encourages that prisoners be afforded the WPS protections. (November 17, 1993)

14-2(b) Prisons, responsibility for providing WPS protections

Question: Who is responsible for assuring WPS protections are provided to prisoners?

Answer: Prison facilities that are agricultural employers or handler employers must provide WPS protections to each prisoner who is an agricultural worker or pesticide handler. The prison must require each person who supervises any prisoner-worker or prisoner-handler to assure that the prisoner-worker or prisoner-handler receives the protections required by WPS. These protections include providing:

- Information at a central location,
- Notice to workers about applications and entry restrictions,
- Instructions to handlers and early-entry workers,
- Pesticide safety training,
- Personal Protective Equipment (including its maintenance),
- Decontamination facilities, and
- Emergency assistance.

When a prisoner is performing tasks as an agricultural worker or pesticide handler on an agricultural establishment that is NOT owned by the prison, the owner of the agricultural establishment also has WPS responsibilities towards the prisoner.

- Prisoner-handlers: When the prisoner is performing handler tasks, the owner of the agricultural establishment must assure that, if the prison is acting as a commercial pesticide handling establishment, the prison is aware of the specific information about applications and entry restrictions on the agricultural establishment. That allows the prison to provide their prisoner-handlers with the information.

- Prisoner-workers: When the prisoner is performing worker tasks, the owner of the agricultural establishment is jointly responsible with the prison (both are agricultural employers) for assuring that the prisoner-workers are provided all of the required WPS protections. This is no different than any agricultural establishment/labor contractor arrangement. (November 17, 1993)

14-3(a) Educational facilities, coverage by WPS

Question: Are educational facilities subject to the requirements of the WPS?

Answer: There is nothing in WPS that exempts educational facilities from the duty to comply with WPS. WPS protections must be provided to pesticide handlers and agricultural workers any time a pesticide product bearing WPS labeling is used on an agricultural establishment in the commercial or research production of agricultural plants. Whether a particular educational facility meets the definition of an agricultural employer or handler employer or is an agricultural establishment engaged in the commercial or research production of agricultural

plants will have to be established on a case-by-case basis, as will whether a student is an agricultural worker or pesticide handler. Factors to be considered include whether the student is receiving any form of compensation and whether the production of agricultural plants is for commercial or research proposes. The Agency intends compensation to be interpreted broadly.

Regardless of the determination of whether the educational institution is an agricultural or handler employer or is an agricultural establishment, EPA encourages that students be afforded the WPS protections. (November 17, 1993)

14-3(b) Educational facilities, responsibility for providing WPS protections

Question: Who is responsible for assuring WPS protections are provided to students?

Answer: Educational facilities that are agricultural employers or handler employers must provide WPS protections to each student who is an agricultural worker or pesticide handler. The educational facility must require each person who supervises any student-worker or student-handler to assure that the student-worker or student-handler receives the protections required by WPS. These protections include providing:

- Information at a central location,
- Notice to workers about applications and entry restrictions,
- Instructions to handlers and early-entry workers,
- Pesticide safety training,
- Personal Protective Equipment (including its maintenance),
- Decontamination facilities, and
- Emergency assistance.

When a student is performing tasks as an agricultural worker or pesticide handler on an agricultural establishment that is NOT owned by the educational facility, the owner of the agricultural establishment also has WPS responsibilities towards the student.

- Student-handlers: When the student is performing handler tasks, the owner of the agricultural establishment must assure that, if the educational facility is acting as a commercial pesticide handling establishment, the educational facility is aware of the specific information about applications and entry restrictions on the agricultural establishment. That allows the educational facility to provide their student-handlers with the information.

- Student-workers: When the student is performing worker tasks, the owner of the agricultural establishment is jointly responsible with the educational facility (both are agricultural employers) for assuring that the student-workers are provided all of the required WPS protections. This is no different than any agricultural establishment/labor contractor arrangement. (November 17, 1993)

14-3(c) Educational facilities, coverage by WPS, compensation

Question: Students participating on academic or research projects may be working as pesticide handlers or agricultural workers. When they receive academic credit for their efforts rather than monetary compensation, are they covered under the WPS?

Answer: The WPS does not define compensation and the Agency intends that compensation should be interpreted very broadly. Stipends or reductions in education costs received as compensation for worker or

handler tasks performed would be considered compensation. Academic credit alone may be considered compensation in situations where students are engaged in worker or handler activities and for which compensation is normally paid or anticipated. There are also situations where students may be in a treated area when they are not subject to the WPS, such as on a field trip or observing a class demonstration. (November 17, 1993)

14-4 Sod/turf growing establishments

Question: Are agricultural establishments that grow sod/turf for commercial or research purposes included under the WPS?

Answer: Yes, agricultural establishments that grow sod/turf for commercial or research purposes are covered by the WPS.

As defined in 40 CFR part 170.3, agricultural plant means any plant grown or maintained for commercial or research purposes and includes, but is not limited to, food, feed, and fiber plants; trees; turfgrass; flowers, shrubs; ornamentals; and seedlings.

An agricultural establishment growing sod/turf may be a greenhouse, a nursery, or a farm. When sod/turf is grown outdoors, the purpose for which the sod/turf is grown determines whether the agricultural establishment is a nursery or farm. Sod/turf growing establishments are considered to be nurseries if the sod/turf is grown for commercial or research purposes and is to be used in its entirety in another location. Sod/turf growing establishments that are not nurseries and that are growing sod/turf outdoors for commercial or research purposes, for example, for seed production, are considered to be farms. (November 17, 1993)

14-5 Trustee management of an agricultural establishment

Question: Is a bank, or other trustee, that owns, or is responsible for the management of an agricultural establishment, required to comply with the WPS, i.e., is the bank an agricultural employer or handler employer?

Answer: Whether a bank or any other holder of a trust of an agricultural establishment is subject to the requirements of the WPS depends on the degree of control the bank or other trustee exercises over the activities on the agricultural establishment.

Under the WPS, an agricultural employer is defined as "any person who hires, or contracts for, the services of workers, for any type of compensation to perform activities related to the production of agricultural plants, or any person who is an owner of, or is responsible for, the management of an establishment that uses such workers." (40 CFR 170.3)

Under FIFRA, a "person" is defined as any individual, partnership, association, corporation, or any organized group of persons, whether incorporated or not. Therefore, a holder of a trust for an agricultural establishment is considered to be a "person" under FIFRA.

A bank or other holder of a trust may also be considered an "owner" of an agricultural establishment unless the bank or other trustee has both leased the agricultural establishment to another person and granted that person full authority to manage and govern the use of that agricultural establishment.

WPS defines owner as "any person who has a present possessory interest (fee, leasehold, rental, or other) in an agricultural establishment covered by this part. A person who has both leased such agricultural establishment to

another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this part." (40 CFR 170.3)

A "handler employer" is any employer who is self-employed as a handler or who employs any handler, for any type of compensation. (40 CFR 170.3)

In summary, a bank, or other trustee, that owns or operates an agricultural establishment is considered to be a person under FIFRA, and depending on the degree of control exercised over the activities on an agricultural establishment, could be considered to be a handler employer or agricultural employer for purposes of the WPS. (November 17, 1993)

14-6 Retail establishments, coverage by WPS

Question: Does the WPS cover establishments engaged in the retail sale of plants, including retail nurseries, retail greenhouses, and other commercial establishments in which plants are held for sale?

Answer: Yes, whenever pesticides bearing WPS labeling are employed for WPS-covered uses in such establishments.

EPA addressed this in the record of the WPS rule development. However, there have been some questions about the WPS definitions of greenhouses and nurseries as any "operation engaged in the ... production of agricultural plants." It has been argued that maintenance of a plant for sale is distinct from production and that, therefore, retail operations are not subject to WPS. This is not the position taken by the Agency for purposes of the WPS. In developing the rule, EPA concluded it would not be useful to define production in such a way as to exclude maintenance of plants, whether or not they are being held for sale. In part, this is because such a distinction is difficult to make. For example, while dormant, plants in a "production" orchard are not then growing, while potted plants "held" for retail sale surely are. It was in recognition of this that EPA defined agricultural plants in the WPS as "any plant grown or maintained for commercial or research purposes." In effect, EPA defined production to include maintenance of living plants.

Moreover, when WPS-labeled pesticides are used in such maintenance, the types of worker and handler exposure to them are no different than in non-retail establishments. Therefore, there was no reason to exclude retail establishments on the basis of potential occupational risk. On the other hand, since most purely retail establishments may be expected to hold plants only briefly, pesticide use may be infrequent. In addition, EPA expects that when treatment in such establishments does occur, it will commonly involve pesticides that are unlikely to bear WPS labeling. As a result, EPA expects this question to arise only rarely in practice.

This interpretation is for purposes of the WPS and is not intended to impact other regulations, such as the Certification and Training regulations. (November 17, 1993)

14-7 Agricultural employer, liability when crop is owned by someone other than grower

Question: When a packing house or other purchaser (such as of Christmas trees or citrus) buys a crop from a grower while it is still in the field, or before the crop is planted, or when the packing house contracts to have it grown, and sends its own workers in to harvest it, who has WPS responsibilities toward those harvesters?

Answer: The grower and the packing house management are both agricultural employers under WPS in this situation and therefore have joint responsibility for ensuring compliance with any WPS entry restrictions, training, decontamination or other requirements applicable to the field in which the harvesting takes place. In regard to the liability for individual cases, the Agency will look at the facts of the specific case.

The WPS definition of agricultural employer is broad because the Agency sought to avoid circumstances in which confusion about responsibility could lead to failures to adequately protect workers. The definition covers BOTH owners/managers of agricultural establishments AND employers of agricultural workers. Thus, in addition to those responsible for the management of the agricultural establishment, the packing house is a responsible agricultural employer in the same way that a labor contractor would be. For further discussion on liability, attached are the following references: 1) "The Worker Protection Standard: A Summary of the Public's Comments and the Agency's Response," section D., "Comments on Definitions;" and 2) "The Worker Protection Standard," page 38135, comment number 8.

Reference Number 1: "The Worker Protection Standard: A Summary of the Public's Comments and the Agency's Response," section D., "Comments on Definitions."

> Employer. In keeping with the use of the employment relationship to assign primary responsibility for protection of agricultural workers in the final rule, a definition of "agricultural employer" has been added to subpart A. This definition is intended to encompass all employers of workers who may be exposed to pesticides while engaged in agricultural-plant activities. The definition of "handler employer" has also been added to subpart A. The definitions are derived from the definition of "employer" in the NPRM.
>
> Persons falling under the definitions of "agricultural employer" are responsible for the requirements of subpart B. In some cases the employer of agricultural workers also will be an employer of workers who handle pesticides ("handler employer") and therefore responsible for the requirement of subpart C (for employer, if the same grower hires both fieldworkers and handlers, or if the same worker is hired to handle pesticides and to perform other agricultural activities.)
>
> The definition of agricultural employer is intended to include persons who have (1) a position of ownership, management or control within an agricultural establishment, i.e. a farm, forest, nursery or greenhouse; or (2) an employment relationship to agricultural workers. The relevant positions of control identified in the definition include ownership of the establishment (e.g., a farm owner); management of the operation (e.g., a farm operator); and recruiting or furnishing workers for the operation (e.g., a labor contractor).

Reference 2: "The Worker Protection Standard," page 38135, comment number 8.

> Comment # 8: Making agricultural producers responsible for employees' own safety actions is unrealistic.
>
> Response: While compliance is primarily a duty of employers under the final rule, enforcement officials have authority to consider the facts of the case before making a determination of whether a violation has occurred. The Agency agrees, for example, that it would be unfair for employers who expend considerable efforts to assure compliance to be treated in the same manner as less conscientious employers who tolerate encourage noncompliance. However, the Agency believes that it is more appropriate not to intrude by regulation into this area. Enforcement officials have traditionally based their compliance decisions on the facts of an individual case. (November 17, 1993)

14-8 Seed treatments

Question: Are pesticide applications to seed, i.e., seed treatments, covered by the WPS?

Answer: If a product has a WPS reference Statement, and the seed is being treated at an agricultural establishment at or immediately before planting (such as through use of hopper boxes, planter boxes, slurry boxes, or tractor-mounted treaters), WPS applies. If any of these criteria are not met, WPS does not apply. (February 28, 1995)

14-9 Plants grown for research

Question: Does the worker protection rule apply to pesticides used in conjunction with research (relating to the exemption listed in Subpart B, section 170.102(b)(3)? For example, a greenhouse may conduct plant research and may use pesticides, but not to study the effects of pesticides on plants. Would this situation require compliance with the provisions of the Standard?

Answer: Yes. The WPS must be complied with in the situation outlined above. The WPS applies to plants grown for research purposes, and it does not matter whether the research is to study the effects of pesticides on plants or for some other purpose. WPS protections must be provided to pesticide handlers and agricultural workers any time a pesticide product bearing WPS labeling is used on an agricultural establishment engaged in the commercial or research production of agricultural plants. (February 28, 1995)

14-10 Contracts, liability

Question: If an employer covered by the WPS contracts out spraying on national forest land, does he eliminate his liability if he writes language into his contracts that requires the contractor to comply with the requirements for forestry workers and handlers in 40 CFR Part 170?

Answer: No. An employer may not contract away liability. In the event of a violation of the requirements of the WPS, the Agency would weigh the facts of the case to determine who was responsible for the violations and charge the responsible party or parties with the violation. (February 28, 1995)

14-11 Planting treated seed

Question: Does Part 170 of the Worker Protection Standard apply to areas in which treated seed is being applied or has been applied if the pesticide label does not specify a restricted entry interval?

Answer: For the purposes of the WPS, planting treated seed is not considered a pesticide application and does not trigger WPS handler or worker protections. If, however, seed is treated with a pesticide on an agricultural establishment at or immediately before planting, the WPS applies. See other seed treatment questions and answers. (February 28, 1995)

14-12 Potting soil mixtures, applicability

Question: Greenhouse and nursery growers often order potting soil mixed to their specifications from firms who operate this type of business. The grower may also request that a fungicide or insecticide be included in the potting mix. The potting mixture may be delivered to the grower on the same day that it is made up and the grower could have workers planting seeds or plants in the mixture on the same day. Does the WPS apply to this situation?

Answer: No. The Worker Protection Standard (WPS) does not apply to a product that is not applied on the agricultural establishment in the production of an agricultural plant. However, there may be other labeling provisions that are not specific to WPS that apply. Potting soil treated on a non-agricultural establishment or by a farm, nursery, greenhouse or forest is subject to the labeling provisions of the pesticide product used to treat the soil. Therefore, any label specific non-WPS restricted entry interval (REI) or other labeling restrictions must be met. (February 28, 1995)

14-13 Potting soil mixtures, requirements to meet

Question: Growers make their own potting mixtures, which include registered fungicides or insecticides. The potting mix may be used over a period of several days. What requirements must the agricultural employer meet? Will there be any kind of restricted entry interval before the soil can be handled by persons who will plant seeds or plants?

Answer: The WPS does apply when potting soil is treated with a pesticide product on an agricultural establishment and that potting soil is used on that agricultural establishment in the production of an agricultural plant as defined in the WPS.

In this case, the treated potting mix is the treated area, and the REI would apply to the potting mix. The REI would begin when the application is completed.

Mechanical filling of pots or mechanical planting of seeds or plants may take place prior to the expiration of the restricted entry interval; however, workers may not come into contact with the treated soil unless they meet the exceptions as provided for in the WPS Rule. (February 28, 1995)

14-14 Conservation Reserve Program land, coverage by WPS

Question: Do WPS requirements apply to pesticide use on Conservation Reserve Program (CRP) land, land originally used for agriculture but taken out of production?

Answer: If the land is not used in the production of an agricultural plant, for research or commercial purposes, the WPS does not apply. CRP plantings that are not expected to be harvested would be expected to fall outside the scope of WPS. Any pesticide applications made in preparation for planting an agricultural plant or to an agricultural plant that is intended to be harvested will be subject to the WPS regulation. (February 28, 1995)

14-15 Volunteers, coverage by WPS

Question: If members of a garden club volunteer their services in the production of flowers and plants that are sold at the club's annual fund raiser, and pesticides are used, is the volunteer a worker under the Rule?

Answer: A volunteer is not considered a worker under the definition in 40 CFR part 170.3 unless they receive some form of compensation. Regardless of whether compensation is provided, the Agency encourages that volunteers be afforded the WPS protections. (February 28, 1995)

14-16 Workers hired over 30 days after application

Question: If an agricultural employer hires workers to perform hand tasks in fields that were treated more than 33 days previously, does he need to train them or provide them with a decontamination site?

Answer: No, he does not have to provide either if no worker enters an area to which a pesticide has been applied or for which no REI has been in effect within the last 30 days. (March 7, 1995)

14-17 Persons stepping up nursery stock

Question: Will the person stepping up the stock (e.g. repotting) to 3 gallon containers from 1 gallon containers be considered a nurserymen under WPS?

Answer: The WPS does not use the term nurserymen in terms of its applicability; the WPS would apply to nurserymen if they meet the definition of either workers, handlers, agricultural employers, or handler employers. Persons stepping up stock (repotting) without applying a pesticide are workers. (March 7, 1995)

14-18 Are grower cooperatives establishments

Question: Are grower cooperatives considered an establishment under the Rule?

Answer: It depends on the activities of the cooperative. The cooperative may be an agricultural establishment or a commercial pesticide handling establishment, if it meets the definition in the regulation. The cooperative may also be an agricultural employer or handler employer. (March 7, 1995)

14-19 Persons carrying nursery stock

Question: Under the definition of nursery, is the person that carries nursery stock included in the nursery portion of this rule?

Answer: Yes. The person that carries nursery stock is considered a worker if he is employed by the agricultural establishment. Carrying plants is a worker task. (March 7, 1995)

14-20 Persons selling produce from home gardens

Question: Are persons who grow and sell produce from their home gardens covered by the WPS?

Answer: Yes, such persons are covered by the WPS if they use a pesticide with the WPS statement on the label in the production of the produce being sold. The exception for home gardens does not apply when the produce is produced for commercial purposes.

Note, if the person does not employ workers or handlers and only he or his immediate family as defined in the rule are performing the work, only certain requirements apply. (See question 7.17 of IGW Q & A Document.) (March 7, 1995)

14-21 Employees of landfills

Question: Employees of sanitary landfills that accept pesticide containers can come in contact with pesticides remaining in the containers. Are these employers covered by the WPS?

Answer: No, sanitary landfills are not covered under the WPS. (March 7, 1995)

14-22 Garden clubs, coverage by WPS

Question: Is the garden club considered an agricultural employer?

Answer: Yes. The garden club is an agricultural employer if (1) it hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of agricultural plants; or (2) if it is an owner of or is responsible for the management or condition of an agricultural establishment that uses such workers.

However, the garden club is not an agricultural employer if the only persons working in the garden club in production of agricultural plants are uncompensated volunteers. (March 7, 1995)

14-23 Workers not involved in production of agricultural plants, coverage by WPS

Question: Are employees of an agriculture establishment but whose work is not directly involved in the production of agricultural plants, covered by the WPS?

Answer: No, they are not covered as workers or handlers. Examples of employees not normally considered agriculture workers or handlers under WPS would include but not limited to office employees, truck drivers, mechanics, road workers, surveyors and any other workers not engaged in worker/handler activities. However, note that some provisions of the WPS require protections for persons other than workers and handlers. Some requirements apply to all persons some apply to persons engaged in repairing, cleaning or adjusting application equipment or those who clean or launder pesticide contaminated PPE. Please refer to Section 170.110, 170.234, and 170.240 for further information. (March 7, 1995)

14-24 Production of agricultural plants for other than direct sale

Question: What is the scope of the WPS with respect to establishments producing agricultural plants for other than direct sale, i.e., in-house use?

Answer: There is no exception for agricultural plants produced for other than direct sale, i.e., in-house use. The WPS covers an agricultural establishment if (1) a WPS-labeled agricultural pesticide is used on the establishment, (2) workers or handlers are employed by or on the agricultural establishment, (3) the establishment is a farm, forest, nursery, or greenhouse, as defined in the WPS, and (4) the establishment or the activity is not covered by one of the exceptions specifically described in the rule, Section 170.102 (b).

For instance, the following operations are covered by the WPS: Production of hay or feed grown for livestock on dairy farms, cattle ranches, or other livestock operations; sod farms, greenhouses, or nurseries operated by golf courses; and greenhouses and nurseries operated by theme parks, hotel chains, botanical gardens, and state and local governments. (Note: Pasture and rangeland used for grazing are excluded.) (March 15, 1995)

14-25 Employees working for a packing shed, coverage by WPS

Question: Are employees working for a packing shed covered by the WPS?

Answer: It depends on the activity and where it occurs. If employees are packing produce into containers in the field, they are covered by the WPS. If employees are working in a packing shed after harvest, they are not covered. (Section 170.102(b)(9) and 170.202(b)(8). See also questions and answers 4.12 and 14.17 for definitions of when an agricultural plant is considered "harvested.") (June 14, 1996)

14-26 Day haulers, coverage by WPS

Question: Must day haulers -- an operation that transports workers to the agricultural establishment -- comply with the WPS, i.e., are day haulers agricultural employers?

Answer: The WPS defines agricultural employers as "any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner or is responsible for the management or condition of an agricultural establishment

that uses such workers." Day haulers who hire or contract for the services of workers in the field, or who are acting for someone who is doing this, would be considered agricultural employers and must comply with the WPS. If a person only provides transportation to and from the agricultural establishment, then he would not be covered by the WPS. (June 14, 1996)

14-27 Are researchers considered workers or handlers?

Question: Agricultural research involving pesticides may often necessitate researchers and research assistants to enter pesticide treated areas before applicable REIs have expired to collect data and/or samples for analysis. Given that research uses of registered pesticides (i.e., use according to the label) are covered under the WPS, would researchers entering treated areas before the expiration of the REI be considered workers or handlers?

Answer: It depends on the activity the researcher is performing. If he/she is applying a pesticide or performing other handler activities, he/she is a handler. If he/she performs worker activities, he/she is a worker. A person who is entering the treated area during the REI to collect data and/or samples related to assessing pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants and is not performing any other hand labor tasks is considered a crop advisor under the rule. Crop advisors are considered handlers during the application and until the expiration of the REI, at which time they are considered workers in terms of coverage under the WPS. For additional information about crop advisor requirements, please see FR Notice Volume 60 No. 85 May 3, 1995, page 21928 [40 CFR part 170].
(June 14, 1996)

14-28 Field transplant operations, coverage by WPS

Question: Several field agricultural crops are grown using transplants from nursery seedbeds. Most current agricultural practice involves the transplants being set into the ground concurrent with an at-plant pesticide application. Such transplant operations usually are accomplished using the following two methods: (1) manual transplanting with concurrent pesticide application where the employees plant the seedlings in advance of the spray-rig, with the spray-rig following behind applying the pesticide; or (2) mechanical transplant/application process where equipment is a combination planting apparatus and spray-rig on which employee(s) sit and feed seedlings into the planting arm or wheel (depending on the equipment) which mechanically sets plants into ground while at the same time a pesticide is applied. Additionally, there may be an employee following the rig to assure that the planter/spray-rig is operating and setting the plants in properly. NOTE: There are several variations of these transplant type operations where planting occurs at the same time as pesticide applications (dip solutions, etc.). How will these transplant operations be treated under the WPS?

Answer: Under the WPS, agricultural employers may not allow any person (including workers), other than an appropriately trained and equipped handler, to enter or remain in the treated area during an application. Further, employers and pesticide handlers must assure that no pesticide is applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handler.

For field transplant operations such as those described in number one above (1), the employees are considered workers since they are solely performing hand-labor tasks as transplanters and are not involved in the pesticide application itself. As such, they may not enter or remain in a treated area during the application of a pesticide. If the workers can keep in front of the treated area (that area to where the pesticide is being directed or has been directed) and the employer and handler assure that the workers do not come into contact with the pesticide or pesticide treated surfaces while transplanting (directly or through drift), then the operation would not constitute a WPS violation. It is the employer's responsibility to notify the workers of the pesticide application and to assure that the workers who are transplanting seedlings constantly remain in front or outside of the treated area.

For field transplant operations that occur concurrently with pesticide application such as those described in number two above (2), and for similar pesticide applications combined with another agricultural operation which may require additional employees to operate the supplemental equipment (at-plant seed treatments, etc.), the Agency views the entire operation to be part of a "pesticide application process." Therefore, the employees will be considered handlers and are not subject to restrictions associated with remaining outside of the treated area. However, all employees taking part in such a transplant operation must be trained and equipped as handlers, including those following the rig as described in the question above. These employees may not perform tasks in the treated area other than those described above or otherwise allowed by the regulation.

NOTE: In addition, it is the employer's responsibility to comply with other applicable rules and provisions, e.g., the notification requirements and nurseries.
(June 14, 1996)

15 Training

15-1 Training verification card

Question: How will growers or labor contractors know if their workers have been trained if documentation is not required?

Answer: The employer must make sure the worker receives training if he/she is not sure the worker has been trained already. However, no documentation of training by the worker is required by the Standard. To assist the employer in verifying whether the training has occurred, EPA is defining a voluntary training verification system which may incorporate the issuance of a card upon completion of training. (March 22, 1993)

15-2 Exceptions to training requirements

Question: Section 170.130(a)(3)(ii) allows for an interim (five year) exception to worker training. Does this mean that if entering a treated property for less than 16 days that no training is required? If entering several different establishments every day to conduct hand labor activities, must the worker receive training for <u>each</u> field?

Answer: (First question) Until October 20, 1997, workers must be trained before they accumulate more than 15 separate days of entry into treated areas on a single agricultural establishment where within the past 30 days, a pesticide has been applied or a restricted-entry interval imposed by the label has been in effect. The accumulation of the 15 days accrues independently at each establishment. These 15 days need not be consecutive and may occur over several periods of employment or over several seasons or years.

(Second question) No, once a worker has received training, the worker need not be retrained for 5 years, but each employer must assure that the worker has been trained. (March 22, 1993)

15-3 Issuance of training verification cards

Question: Who will approve/issue the EPA Worker Protection Standard Certificate?

Answer: The training verification program, which will include use of a training verification card, is being developed by EPA with participation by representatives from the Regions, States, training experts, worker advocacy groups, industry groups and grower groups. The details of the training verification program will be announced in the future. The issue of who will approve/issue the EPA Worker Protection Standard verification card will be addressed at that time. (March 22, 1993)

15-4 Additional training for certified applicators

Question: According to the Rule, if an employer hires workers or handlers who are certified applicators under Part 171, he is not required to provide them with pesticide safety training. Is the employer required to provide them with training on subjects he knows were not included in their certification training (e.g., heat-related illness and the WPS)?

Answer: No. The handler employer or agricultural employer is not required to provide pesticide safety training to workers or handlers who are certified applicators for areas he knows were not covered during the certified applicator training. (February 28, 1995)

15-5 40 CFR section 170.234(c)(2,3); do requirements herein constitute a training program?

Question: Are the requirements in section 170.234(c)(2,3) considered a training program and could compliance be accomplished with a brief demonstration and a statement that pesticides can be hazardous? Is this provision contradicting the WPS definition of handlers?

Answer: No, the requirements under the above section are not considered a training program. Compliance would be accomplished by following section 170.234 (c)(1,2,3). Specifically, before allowing any other person besides a handler to repair the equipment, the handler employer must remove pesticide residues. If removal is not feasible, the employer must inform the repairman that the equipment is contaminated, that pesticide exposure has the potential to produce harmful effects, and about the correct way to handle the contaminated equipment.

This provision does not contradict the definition of handler because handlers, unlike outside repairmen, are employed by an agricultural establishment or commercial pesticide handling establishment. For pesticide handlers repairing, cleaning, or adjusting equipment, the employer has to instruct the handler in the safe operation of equipment for mixing, loading, transferring, or applying pesticide, including, when relevant, chemigation safety and drift avoidance. (June 14, 1996)

16 Enforcement and Liability

16-1 Guidance to States; determining recipient of WPS enforcement actions

Question: What guidance has EPA provided the States regarding determining the appropriate recipients of WPS enforcement actions?

Answer: EPA issued guidance on February 13, 1995, entitled "Summary Guidance on Issuance of WPS Enforcement Actions". In that document, EPA recommended that a common sense, case-by-case approach be used in determining the appropriate recipient(s) of a WPS enforcement action. To provide further clarification and assistance in determining the appropriate recipients, the Agency recommended that State Lead Agencies consider the following ten (10) factors:

(1) Who has control over pesticide use;
(2) Who directs pesticide use;
(3) Who has control over the agricultural establishment for posting and other WPS-related responsibilities;
(4) Who gives direction on the agricultural establishment for posting and other WPS-related responsibilities;
(5) Who has control over the practices used by agricultural workers on the establishment;
(6) Who directs the practices used by agricultural workers on the establishment;
(7) Measures taken to comply with provisions of the WPS;

(8) Actions taken in response to incidents of noncompliance;
(9) History of prior violations; and
(10) Ability to assure continuing compliance with the WPS.
(June 14, 1996)

16-2 Responsibility for agricultural workers brought in by labor contractor

Question: Who has the responsibility for training crews of agricultural workers brought in by a labor contractor?

Answer: The agricultural establishment owner, operators and employers, including labor contractors, are jointly responsible for providing training and other WPS protections to workers, and for ensuring compliance with WPS requirements. The agricultural owner, operator and employer, including labor contractors, each may be liable for a given WPS violation. During WPS implementation, EPA recommends that a common sense, case-by-case approach be used in determining the appropriate recipient(s) of a WPS enforcement action as referenced in question 16.11. Documentation by agricultural owners/operators/employers could assist them in demonstrating to State regulatory officials their efforts to comply and their responses to instances of noncompliance. (June 14, 1996)

16-3 Employer responsibility for compliance in chain of command

Question: The WPS holds agricultural owners, operators and employers responsible for compliance. How far up a chain of command does this responsibility go? Do crew leaders and farm managers include professors supervising research studies and issuing grades? Does employer responsibility for compliance extend to administrators, including experimental station directors, department chairpersons, agriculture college deans, university chancellors, presidents and boards of curators?

Answer: The WPS, at section 170.3, defines agricultural employer as any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of or is responsible for the management or condition of an agricultural establishment that uses such workers. Thus, any person meeting this definition must assure that workers are provided WPS protections and may be liable in the event protections are not provided. The Agency identified 10 factors to guide the States in determining the appropriate recipient(s) of an enforcement action as referenced in question 16.11. (June 14, 1996)

16-4 Employer liability under WPS if workers claim not to have been trained in some WPS requirements

Question: If an agricultural employer's workers are trained by a trainer who meets the criteria in the WPS at section 170.130(c)(2), will the employer be liable under WPS if workers claim not to have been trained in some part of WPS requirements? Is fifteen minutes of worker training sufficient to protect against litigation?

Answer: The employer would not be liable for WPS training violations if the training meets the requirements of the WPS at section 170.130. The adequacy of worker training is determined by the factors set out in section 170.130(c)(4). EPA cannot address civil liability. No specific time limit is established by the rule; the contents of the training must include the requirements in section 170.130.
(June 14, 1996)

17 Activities Covered by the WPS

17-1 Activities related to the production of agricultural plants

Question: Section 170.3 defines a "worker," in part, as any person who is "performing activities relating to the production of agricultural plants." For the purposes of determining whether an employee meets the definition of a "worker" under the WPS (and would therefore be covered by the WPS), what types of activities would be considered to be "activities relating to the production of agricultural plants?"

Answer: For the purposes of the WPS, activities that are considered to be "activities related to the production of agricultural plants" are those tasks that are directly related to cultivation and/or production of the agricultural plants or the "crop." Such tasks include (but are not necessarily limited to): soil and seedbed preparation; seeding; planting; moving plants, containers and nursery/greenhouse stock; transplanting; weeding; fertilizing; mulching; raking; pruning, thinning, harvesting and any other hand labor activities as defined in the WPS; irrigation and activities related to preparing for irrigation; and other miscellaneous non-handler tasks involved with protecting and/or improving production of the commodity (operating fans and heaters for greenhouses, frost/freeze protection activities, staking, etc.) (March 26, 2004)

17-2 Employees not performing worker or handler tasks

Question: Are employees of an agricultural establishment (including contract labor) covered by the WPS if they are employed by the establishment but do not meet the WPS definition of workers or handers because they are not performing worker or handler activities/tasks? What are some examples of employees that may work on an agricultural establishment, but would not be covered by the WPS as workers or handlers?

Answer: No, employees of an agricultural establishment (including contract labor) that are not performing worker or handler tasks are not covered by the WPS. **[NOTE**: During a WPS covered pesticide application on a WPS covered establishment, certain provisions of the WPS apply to all persons, not just workers and handlers. There are also WPS requirements that apply to persons engaged in repairing, cleaning or adjusting application equipment, and to persons who clean or launder pesticide contaminated PPE. Please refer to Sections 170.110, 170.210, 170.234, and 170.240 for further information. Examples of employees that would not normally be considered workers or handlers under the WPS would include (but are not necessarily limited to): office employees; retail sales staff; building and construction crews; building maintenance/cleaning crews; food preparation or food service staff; truck drivers and/or haulers; mechanics; road workers; surveyors; power line crews; and any other employees not engaged in WPS defined worker/handler activities. (March 26, 2004)

17-3 Is road construction in forests an activity related to the production of an agricultural plant?

Question: In forest operations, rudimentary road construction must often take place to allow harvesting of the timber. This entails laying gravel onto cleared paths so trucks and harvest crews have access to forest areas being harvested. Assuming a WPS covered product has been applied to the forest, would the construction of the road in this situation be considered an activity related to the production of an agricultural plant (timber), such that the landowner and/or the road construction company must provide WPS protections for the road construction crew because they meet the definition of agricultural workers?

Answer: No, the construction of the road would not be considered an activity directly related to the production of an agricultural plant (timber in this case). Hence, the road construction crew would not be considered agricultural workers under the WPS, and the landowner and/or the road construction company would not need to provide general WPS protections for the road construction crew. However, please note that during the application of a

covered pesticide on a covered establishment, certain WPS provisions apply to all persons, not just workers and handlers. Please refer to Sections 170.110 and 170.210. Also see question 14-23 for further guidance and clarification. (March 26, 2004)

17-4 Is harvesting pine straw in a forest covered by the WPS?

Question: In pine forest operations, the main "crop" is the lumber from the pine forest, but pine straw is often collected from the forest floor as a byproduct. In many cases, a herbicide is applied to the forest floor for the purpose of destroying vines/weeds because they may complicate harvesting and baling of the pine straw, or because the vines/weeds are considered an invasive species that would contaminate the straw and complicated movement of the harvested pine straw due to varying State quarantine laws. Does this activity or production practice fall under the scope of the WPS? If so, please explain EPA's rationale for this determination, and explain how the different aspects of this practice should be treated under WPS.

Answer: Yes, this activity/production practice does fall under the scope of the WPS. Under the WPS, a forest is defined as any operation engaged in the outdoor production of any agricultural plant to produce wood fiber or timber products. A pine forest operation is covered under the WPS as a forest since the pine trees are agricultural plants being grown for commercial purposes to produce wood fiber or timber products. The pine trees are the agricultural plants in this case, and the lumber and the pine straw would both be considered "timber products." Activities related to raising the pine trees and managing the overall forest operation to obtain the eventual timber products would be considered activities related to the production of agricultural plants. Therefore, herbicide applications to the forest floor to facilitate harvesting of pine straw or to allow shipment of the pine straw under State quarantine laws, would be covered under the WPS (assuming the herbicide is a WPS labeled product). Even though the pine straw may be considered a byproduct or secondary product compared to the actual lumber, it is still a timber product produced from a forest operation covered under the WPS.

Collection of the pine straw would be considered harvesting and a worker activity under the WPS. If the collection of the pine straw was accomplished through the use of mechanized equipment, then the harvesting would not necessarily be considered "hand labor" if there was negligible contact with the pine straw during the process. The pine straw would not be considered to be harvested until it was baled and/or otherwise removed from the forest floor, so herbicide applications to the forest floor while the pine straw was still present would not be considered a post-harvest application and would not be excepted from the WPS. [This situation would be similar to the collection of fallen nuts from an orchard floor. Herbicide applications to the orchard floor to kill weeds in order to facilitate collection of the nuts would be a covered pesticide application. Collection of the nuts would be considered harvesting, and the nuts would not be considered to be harvested until they were either packed into containers or collection bins or otherwise removed from the orchard.] (March 26, 2004)