

Worker Protection Standard Frequently Asked Questions

40 CFR Part 170

4/14/2016

Table of Contents

<u>Topic</u>	<u>Page #</u>
1. Implementation and Applicability.....	3
2. Training.....	6
3. Notification and Hazard Communication.....	14
4. Designated Representative.....	18
5. Application Exclusion Zone.....	20
6. Minimum Age.....	25
7. Personal Protective Equipment.....	26
8. Decontamination.....	28
9. Definitions.....	29
10. Exemptions and Exceptions.....	31
a. Owner and Immediate Family Exemption.....	31
b. Certified Crop Advisor Exemption.....	35

For complete information about the WPS rule requirements, refer to the final WPS rule: www.federalregister.gov/articles/2015/11/02/2015-25970/pesticides-agricultural-worker-protection-standard-revisions.

For additional information about the WPS, visit: www.epa.gov/pesticide-worker-safety.

For questions about how to comply with the WPS rule requirements, contact pont.richard@epa.gov.

This document provides general guidance to help you comply with the requirements of the Federal Worker Protection Standard (WPS) for agricultural pesticides, 40 CFR part 170, as amended in 2015. This document provides responses to some frequently asked questions about the WPS requirements but does not include all of the information necessary to be in compliance with the WPS, nor does it contain all of the requirements of the WPS. EPA may issue additional guidance about the WPS, and the WPS may be amended in the future. Check with your state or tribal agency responsible for pesticides for further information and updates. Note that this guidance is not binding on EPA or any outside parties, and the EPA may depart from the guidance where circumstances warrant and without prior notice.

1. Implementation and Applicability

Q1: Which provisions of the new rule go into effect in 2017 and which go into effect in 2018?

A: ALL of the WPS requirements in the revised final rule will become enforceable on January 2, 2017, EXCEPT the following requirements listed below, which are not enforceable until January 2, 2018:

- The new content must be included in the pesticide safety information display [170.311(a)(3)],
- The new content requirements must be covered in worker and handler pesticide safety training [170.401(c)(3) & 170.501(c)(3)], and
- Handlers must suspend applications if anyone is in the application exclusion zone [170.505(b)].

Until these new requirements become enforceable, the existing WPS regulations (subparts A, B and C of 40 CFR part 170) remain in effect.

Q2: When are WPS requirements triggered?

A: The WPS requirements apply whenever a pesticide whose labeling requires compliance with the WPS is used in the production of agricultural plants on an agricultural establishment, with a few exceptions and exemptions.

Q3: Under what pesticide-use situations does the WPS not apply not on agricultural establishments?

A: The WPS does not apply to the following pesticide uses even if they occur on agricultural establishments:

- Government-sponsored public pest control programs over which the owner, agricultural employer and handler employer have no control (e.g., mosquito abatement and Mediterranean fruit fly eradication programs),
- Use on plants other than agricultural plants, including plants in home fruit and vegetable gardens and home greenhouses, and permanent plantings for ornamental purposes, such as plants that are in ornamental gardens, parks, public or private landscaping, lawns or other grounds that are intended only for aesthetic purposes or climatic modification,
- Use for control of vertebrate pests, unless directly related to the production of an agricultural plant,
- Use as attractants or repellents in traps,
- Use on the harvested portions of agricultural plants or on harvested timber (e.g., wood preservation and post-harvest or stored commodity applications),
- Research uses of unregistered pesticides,
- Use on pasture and rangeland where the forage will not be harvested for hay, and

- Use in a manner not directly related to the production of agricultural plants, including, but not limited to livestock pest control (e.g., pesticide applications on livestock or other animals or in or about animal premises), structural pest control and control of vegetation in non-crop areas

Q4: What if a pesticide’s labeling has directions for use or other labeling requirements that conflict with WPS requirements?

A: Where a pesticide’s labeling-specific directions for use or other labeling requirements are inconsistent with requirements of the WPS, users must comply with the pesticide product labeling, except as provided for in the:

- WPS exemptions for certified crop advisors and owners of agricultural establishments and their immediate families,
- WPS exceptions to PPE requirements specified on pesticide product labeling, and
- WPS exceptions for entry by workers during restricted-entry intervals (REIs) (see §§ 170.601, 170.603 and 170.607 of the WPS).

Q5: I want to be in compliance ahead of the deadline, what can I do today?

A: There are several things employers can start doing now, even though they are not yet required to comply with the final WPS rule’s requirements. These include:

- Ensuring that all handlers and early entry workers are at least 18 years old
- Posting warning signs for all pesticide applications with an REI > 48 hours
- Providing Safety Data Sheets (SDSs) along with pesticide application information at the central display site
- Providing emergency eye wash systems at pesticide mixing and loading sites
- Providing the new pesticide safety information (i.e., safety poster) at the central display location and also providing it at decontamination sites
- Implementing application exclusion zones by keeping workers and other people away from the application equipment during pesticide applications
- Providing respirator fit testing, training, and medical evaluation that conforms to OSHA standards for any handler required by pesticide labeling to wear a respirator
- Training workers and handlers with new training content as soon as the materials are available.

Q6: If a small community farm sells its produce and pays workers from the community to work on the farm, is the farm considered an agricultural establishment covered by the WPS?

A: The WPS does not have any special provisions for “community farms.” Any farm, including a “community farm,” that produces agricultural plants for sale or trade or for use in another location (including use as food for the community) meets the definition of an agricultural establishment under the rule and is subject to the WPS. The size of the establishment is not a determining factor in WPS applicability. If a community farm, as an agricultural establishment

subject to the WPS, employs persons as “workers” and/or “handlers” (i.e., they are performing activities that make them workers or handlers under the rule) for wages, salary or other monetary compensation AND uses WPS-labeled pesticides on the farm, then the agricultural employer responsible for managing the farm and employing the workers and handlers has WPS responsibilities to provide WPS protections to those workers and handlers.

Q7: Does the WPS and its minimum age requirements apply to research stations or experimental farms?

A: Yes, the WPS and its minimum age requirements, as well as all other WPS requirements, apply to research stations and experimental farms. If the research station/farm employs persons as “workers” and/or “handlers” (i.e., they are performing activities that make them workers or handlers under the rule) for wages, salary or other monetary compensation AND uses WPS-labeled pesticides on the research station/farm, then it is covered by the WPS and the agricultural employer has WPS responsibilities to provide WPS protections to those workers and handlers. The only exemption from the minimum age requirements is for the owner of an agricultural establishment and members of the owner’s immediate family, which under the WPS includes the owner’s spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. "First cousin" means the child of a parent's sibling, i.e., the child of an aunt or uncle.

2. Training

Q1: Once the rule's new requirements go into effect on January 2, 2017, will I have a grace period allowed before I have to provide WPS training to my workers?

A: No. EPA has eliminated the allowance for a grace period for training workers. Therefore, after January 2, 2017, workers will have to be trained BEFORE they perform any worker task in an area that has been treated with a pesticide or an REI has been in effect within the last 30 days, UNLESS they have been trained as a worker or handler within the last 12 months.

Q2: Is there a grace period for providing WPS training to handlers?

A: No. There has never been a grace period for providing WPS training for handlers and there is no grace period for training handlers under the revised rule. Therefore, after January 2, 2017, handlers will have to be trained BEFORE they perform any handling task on the establishment UNLESS they have been trained within the past 12 months.

Q3: I just trained my workers/handlers in 2016. Do I have to retrain them now? Or when will their training expire?

A: After January 2, 2017, handlers who have not been trained in accordance with the WPS must be trained BEFORE they perform any handling task UNLESS they have been trained within the past 12 months. After January 2, 2017, workers who have not been trained in accordance with the WPS must be trained BEFORE they perform any worker task in an area that has been treated with a pesticide or an REI has been in effect within the last 30 days, UNLESS they have been trained as a worker or handler within the last 12 months.

The training for any worker or handler who has been trained within the last year PRIOR to January 2, 2017, will expire 12 months from the date the training was given.

Q4: It has been more than a year since I have provided WPS training to my workers and handlers. How long will I have before I have to retrain them once the new WPS requirements become enforceable on January 2, 2017?

A: There is no grace period for worker or handler training under the revised WPS. As of the new WPS requirements' compliance date of January 2, 2017, handlers must be trained BEFORE they perform any handling task. Workers must be trained BEFORE they perform any worker task in an area that has been treated with a pesticide or an REI has been in effect within the last 30 days.

Q5: When do I have to start training my workers and handlers under the new training content requirements of the revised WPS rule?

A: Starting January 2, 2018, workers and handlers will not be considered “trained” for purposes of the WPS unless they have been trained according to the new training content requirements of the revised WPS rule. This requirement could be delayed if EPA fails to make revised worker and handler training materials available by July 2, 2017, but EPA expects to have these materials available well before the deadline. In the event that EPA misses the deadline, the old training content requirements will continue until six months after the date EPA has issued a **Federal Register** notice announcing the availability of revised worker and handler training materials that comply with the new training content requirements.

Q6: What are the new training content requirements for workers under the revised WPS (i.e., what is the complete list of training points/topics that must be covered for workers under the revised WPS)?

A: The pesticide safety training for workers under the revised WPS must include all of the following after January 2, 2018:

- The responsibility of agricultural employers to provide workers and handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes ensuring workers and handlers have been trained on pesticide safety, providing pesticide safety and application and hazard information, decontamination supplies and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas. A worker or handler may designate in writing a representative to request access to pesticide application and hazard information.
- How to recognize and understand the meaning of the posted warning signs used for notifying workers of restrictions on entering pesticide treated areas on the establishment.
- How to follow directions and/or signs about keeping out of pesticide treated areas subject to a restricted-entry interval and application exclusion zones.
- Where and in what forms pesticides may be encountered during work activities, and potential sources of pesticide exposure on the agricultural establishment. This includes exposure to pesticide residues that may be on or in plants, soil, tractors, application and chemigation equipment, or used personal protective equipment, and that pesticides may drift through the air from nearby applications or be in irrigation water.
- Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.
- Routes through which pesticides can enter the body.
- Signs and symptoms of common types of pesticide poisoning.
- Emergency first aid for pesticide injuries or poisonings.
- Routine and emergency decontamination procedures, including emergency eye flushing techniques, and if pesticides are spilled or sprayed on the body to use decontamination supplies to wash immediately or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

- How and when to obtain emergency medical care.
- When working in pesticide treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.
- Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working in pesticide treated areas.
- Potential hazards from pesticide residues on clothing.
- Wash work clothes before wearing them again and wash them separately from other clothes.
- Do not take pesticides or pesticide containers used at work to your home.
- Safety data sheets provide hazard, emergency medical treatment and other information about the pesticides used on the establishment they may come in contact with. The responsibility of agricultural employers to do all of the following:
 - Display safety data sheets for all pesticides used on the establishment.
 - Provide workers and handlers information about the location of the safety data sheets on the establishment.
 - Provide workers and handlers unimpeded access to safety data sheets during normal work hours.
- The rule prohibits agricultural employers from allowing or directing any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.
- The responsibility of agricultural employers to provide specific information to workers before directing them to perform early-entry activities. Workers must be 18 years old to perform early-entry activities.
- Potential hazards to children and pregnant women from pesticide exposure.
- Keep children and nonworking family members away from pesticide treated areas.
- After working in pesticide treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.
- How to report suspected pesticide use violations to the State or Tribal agency responsible for pesticide enforcement.
- The rule prohibits agricultural employers from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with or attempting to comply with the requirements of this rule, or because the worker or handler provided, caused to be provided or is about to provide information to the employer or the EPA or its agents regarding conduct that the employee reasonably believes violates this part, and/or made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this rule.

Q7: What are the new training content requirements for handlers under the revised WPS (i.e., what is the complete list of training points/topics that must be covered for handlers under the revised WPS)?

A: The pesticide safety training for handlers under the revised WPS must include all of the training points/topics for workers PLUS the following after January 2, 2018:

- Information on proper application and use of pesticides.
- Handlers must follow the portions of the labeling applicable to the safe use of the pesticide.
- Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide.
- Need for and appropriate use and removal of all personal protective equipment.
- How to recognize, prevent, and provide first aid treatment for heat-related illness.
- Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.
- Environmental concerns, such as drift, runoff, and wildlife hazards.
- Handlers must not apply pesticides in a manner that results in contact with workers or other persons.
- The responsibility of handler employers to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.
- Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone.
- Handlers must be at least 18 years old.
- The responsibility of handler employers to ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator by the product labeling.
- The responsibility of agricultural employers to post treated areas as required by this rule.

Q8: Can certified applicators train workers? Can they also train handlers?

A: Yes, a person who is currently certified as an applicator of restricted use pesticides in accordance with 40 CFR Part 171 can train workers and handlers.

Q9: Who is allowed to train workers under the revised WPS?

A: The person who conducts the training for workers must meet one of the following criteria:

- Be designated as a trainer of certified applicators, handlers or workers by EPA or the State or Tribal agency responsible for pesticide enforcement,
- Have completed an **EPA-approved** pesticide safety train-the-trainer program for trainers of workers, or
- Be currently certified as an applicator of restricted use pesticides in accordance with 40 CFR Part 171.

[NOTE: After January 2, 2017, persons who have only been trained as WPS pesticide handlers will no longer be qualified to train workers under the revised WPS.]

Q10: Who is allowed to train handlers under the revised WPS?

A: The person who conducts the training for handlers must meet one of the following criteria:

- Be designated as a trainer of certified applicators or pesticide handlers by EPA or the State or Tribal agency responsible for pesticide enforcement,
- Have completed an **EPA-approved** pesticide safety train-the-trainer program for trainers of handlers, or
- Be currently certified as an applicator of restricted use pesticides in accordance with 40 CFR Part 171.

Q11: I was previously a certified applicator but my certification has lapsed or expired. Can I still train workers and/or handlers under the revised WPS?

A: No. Only persons who are **currently** certified applicators with a valid certification can train workers and handlers.

Q12: Are State or Tribal agencies required to get approval from EPA to designate certain State or Tribal employees as qualified WPS trainers under 170.401(c)(4)(i) and 170.501(c)(4)(i), (i.e., so the state employee meets the WPS training qualification of being “designated as a trainer of certified applicators, handlers or workers by the State or Tribal agency responsible for pesticide enforcement”).

A: No. There is no specific designation process required by EPA for a State or Tribal employee to be “designated as a trainer of certified applicators, handlers or workers by the State or Tribal agency responsible for pesticide enforcement.” It is a function of their job responsibilities. If a person’s job responsibilities in their State or Tribal government affiliated position includes WPS training for workers or handlers, or training for certified applicators, then that person is “designated as a trainer of certified applicators, handlers or workers by the State or Tribal agency responsible for pesticide enforcement.”

Q13: I was previously designated as a trainer of both workers and handlers by my State or Tribal agency responsible for pesticide enforcement. Do I have to complete an EPA training or program to continue operating as a trainer of workers and handlers?

A: No. Persons who are designated as trainers of workers and/or handlers by their State or Tribal agency responsible for pesticide enforcement are still authorized to continue to train workers and handlers without further requirements as long as they are still employed in the State or Tribal designated training position (e.g., extension agents, state/tribal pesticide program or enforcement staff who do WPS training, etc.). [NOTE: EPA expects that State and Tribal pesticide enforcement agencies who have designated persons as trainers of workers and/or handlers will provide the necessary training or other information to such trainers to ensure that they are familiar with the new WPS training requirements.]

Q14: If all my handler employees are certified applicators do I still need to provide WPS handler training to them?

A: No. As long as the handlers are all currently certified as applicators of restricted use pesticides in accordance with 40 CFR Part 171, they are exempt from the WPS handler training requirements. [NOTE: These handlers still need to be informed of the labeling, application-specific, and establishment-specific information required by § 170.503 of the rule (i.e., Knowledge of labeling, application-specific, and establishment-specific information for handlers.), and all other applicable WPS protections for handlers must be provided (e.g., PPE, decontamination supplies, emergency assistance, etc.)]

Q15: The revised WPS requires annual training for handlers. How does this requirement apply if all my handler employees are certified applicators? Do they need to be certified or recertified annually?

A: As long as the handlers are all currently certified as applicators of restricted use pesticides in accordance with 40 CFR Part 171, they are exempt from the WPS handler training requirements and do not need to be trained or retrained as long as they maintain a valid, current applicator certification. Handlers holding a current, valid applicator certification do not need to certify or recertify annually, they only need to be recertified in accordance with applicable state, tribal or federal agency certification requirements.

Q16: If my handlers' applicator certifications have lapsed or expired and they have not been recertified, when do they need to be trained?

A: If a handler's applicator certification has lapsed or expired such that he is no longer holding a valid, current applicator certification, then the handler must receive WPS handler training BEFORE the handler performs any handling task.

Q17: Can the employer's training recordkeeping requirement be in the form of an attendance roster as long as all of the required information is documented?

A: Yes, the training recordkeeping requirement may be in the form of an attendance roster as long as all of the training recordkeeping information required by the rule is included on the roster record.

Q18: Is EPA going to continue to issue training verification cards?

A: No, EPA is no longer going to supply or issue training verification cards.

Q19: I understand EPA is discontinuing its program to supply and issue training verification cards. Can the States or a non-government organization (NGO) that conducts WPS training create their own training verification cards to be handed out at training sessions? Can those cards be used for meeting the training recordkeeping requirement?

A: Yes, States and NGOs involved in conducting WPS training may develop and issue their own training verification cards at training sessions. The training verification cards can be used to meet the employer's recordkeeping requirement as long as all of the training recordkeeping information required by the rule is included on the training verification card and the employer creates and maintains his/her own record of the training that contains the information required by the rule.

Q20: Can states, cooperative extension service programs or private firms develop their own WPS training materials as long they include the necessary topics?

A: Yes, but they must have the materials approved by EPA. EPA will be issuing guidance for submission and approval of WPS training materials for workers and handlers.

Q21: How will employers know that training materials are "EPA-approved" training materials?

A: All EPA-issued training materials are EPA-approved. WPS training materials that are developed and issued by EPA will bear the official EPA logo and have an EPA publication number. WPS training materials that have been developed by States, NGOs or other governments or organizations and have been approved by EPA should bear an EPA approval number and a statement indicating the materials have been approved by EPA to meet the requirements of the WPS for worker or handler training materials.

Q22: Does EPA intend to produce updated WPS training materials for both workers and handlers that comply with the rule's new training content requirements? Will these training materials be in the form of manuals or videos?

A: Yes. EPA intends to produce updated WPS training materials for both workers and handlers that comply with the new training content requirements. EPA intends to produce these training materials in a variety of formats including manuals, videos and potentially other formats such as flip-charts.

Q23: When will the new EPA-approved WPS training materials be available?

A: EPA will ensure that updated EPA-approved WPS training materials for both workers and handlers are made available to the regulated community no later than July 1, 2017 and will publish a Notice in the *Federal Register* announcing the availability of the updated training

materials at least six months prior to January 2, 2018. If EPA has not published a Notice in the *Federal Register* announcing the availability of the updated WPS training materials for both workers and handlers by July 1, 2017, then the requirements to train under the new content will not be required by January 2, 2018, and instead will be delayed six months from the date that EPA publishes a Notice in the *Federal Register* announcing the availability of the updated training materials.

Q24: Will EPA have a process established to approve Train the Trainer courses should one be developed by an SLA, University Cooperative Extension Service or an NGO?

A: Yes. EPA intends to distribute guidance for submission and approval of WPS Train the Trainer programs, and will maintain a program and process for approving these programs.

Q25: I previously completed a WPS Train the Trainer program for both workers and handlers that was offered by my state before the new rule requirements went into effect. Do I have to complete a new Train the Trainer program before I can legally train workers or handlers under the new WPS requirements?

A: Yes. EPA has not previously approved State WPS Train the Trainer programs, but the new rule requires Train the Trainer programs to be approved by EPA in order for persons to be recognized as qualified trainers under the rule's new requirements. Therefore, in the absence of meeting one of the other WPS trainer qualifications, persons must complete a new EPA-approved Train the Trainer program for workers and/or handlers, as appropriate, in order for them to be able to legally train workers and handlers under the new rule requirements. This will ensure that persons who completed previous Train the Trainer programs are made aware of the new training content and other applicable training requirements of the revised rule.

3. Notification and Hazard Communication

Q1: I understand that if I'm using a product where the label requires "double notification," this means I have to post signs and provide oral notification in accordance with the WPS rule. If the pesticide product labeling has an REI greater than 48 hours, but it's not designated on the label as requiring "double notification," does that mean that I'm only required to post in accordance with the WPS rule and that I do not necessarily have to provide oral notification as well?

A: Yes. If the pesticide product labeling requires a restricted-entry interval greater than 48 hours and does not have a statement requiring both the posting of treated areas and oral notification to workers, then the agricultural employer must notify workers of the application by posting warning signs in accordance with the rule but is not required to provide oral notification as well. If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer must post signs in accordance with the rule and must also provide oral notification of the application to workers in accordance with the rule.

Q2: Could a WPS-covered establishment that has to maintain a central display site choose to make their SDS and application information available in electronic format?

A: Yes, EPA agrees that the requirements for retention and display of application records and the SDS could both be met with electronic records as long as all the other applicable requirements at 170.311(b) regarding content, location, accessibility, legibility and display and retention times are met. Workers and handlers would need to have unimpeded access to the computer or other device at all times during their normal work hours, and would need to be instructed on how to access the electronic records on the computer or other device.

Q3: When a commercial applicator does an application for someone, could they give an electronic copy of the safety data sheet (SDS) instead of a paper copy?

A: Yes. EPA agrees it would be acceptable for the commercial applicator or commercial pesticide handler employer (CPHE) to provide the SDS to the agricultural establishment electronically since the agricultural employer has the option of displaying the information electronically or printing it off for display depending on the choice of the agricultural establishment. But it is important to point out that there is no WPS requirement imposed on the commercial applicator (or CPHE) to provide a copy of the SDS to the agricultural employer. Under §170.313(i) of the revised WPS, the CPHE is required to provide the agricultural employer all of the following information before the application of any pesticide on an agricultural establishment after January 2, 2017:

- (1) Specific location(s) and description of the area(s) to be treated.
- (2) Date(s) and start and estimated end times of application.

- (3) Product name, EPA registration number, and active ingredient(s).
- (4) Labeling-specified restricted-entry interval applicable for the application.
- (5) Whether posting, oral notification or both are required under § 170.409.
- (6) Any restrictions or use directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons during or after application.

It is the responsibility of the agricultural employer to obtain and display the SDS for any WPS-covered pesticides used on the establishment if the agricultural establishment employs workers or handlers. Although the CPHE isn't required to provide a copy of the SDS to the agricultural employer, EPA encourages the CPHE to do so since the pesticide registrant/distributor should provide copies of the SDS to them with the pesticide.

Q4: Can SDS sheets be maintained in notebooks? Where should they be kept?

A: Yes, the SDS sheets may be maintained in a notebook as long as the notebook is accessible at the central display site and as long as all the other applicable requirements at 170.311(b) regarding content, location, accessibility, legibility and display and retention times are met.

Q5: Is English the only required language for the SDS and application information to be made available in?

A: Yes.

Q6: Does the WPS require SDSs to be provided in a language the workers or handlers can read or understand? Are Spanish language SDSs or SDSs in other languages commonly available in the US? Can an employer or establishment choose to provide Spanish language SDSs if they are available?

A: The WPS does NOT require SDSs to be provided in any other language besides English. It is our understanding that some registrants and chemical producers have developed SDSs in Spanish, but there is no OSHA requirement under the SDS regulation for them to produce Spanish SDSs in the US, so they are not commonly available. We are not aware of SDSs being commonly produced and distributed in other languages in the US. However, EPA encourages employers to provide SDSs in Spanish if they are available and it may better serve the needs of their employees.

Q7: In 170.311(b)(5), the rule allows the employer 24 hours after an application before the SDS and pesticide application information have to be made available at the central display site. If an REI is less than 24 hours, won't this place workers at risk for not being made aware of the application?

A: No. The agricultural employer has a separate requirement under the WPS to notify all workers on the establishment of any area on the establishment that is being treated with pesticides or that may be under an REI if those workers may come within a quarter mile of such areas. The notification must be provided orally or by posting the area with the WPS warning sign, and the notification must be provided prior to the application or at the start of the workers' work period if they will be coming on to the establishment when applications are ongoing or an REI is already in effect. The rule also prohibits workers from being allowed in a treated area, and they are prohibited from entering an area under an REI (even if allowed under early entry exceptions) until the SDS and application information have been made available at the central display site.

Q8: Do private applicators have to keep the records required by the WPS? I thought EPA was not allowed to establish private applicator recordkeeping requirements.

A: Only if the private applicator is also an agricultural employer or other person required by the WPS to maintain records. The WPS does not impose recordkeeping requirements on private applicators in regard to their activities as private applicators. However, being a private applicator does not exempt a person who is also an agricultural employer from the WPS recordkeeping requirement applicable to agricultural employers. The WPS requires "agricultural employers" to keep certain records if they employ workers and/or handlers on the establishment and use WPS-labeled products in the production of agricultural plants. The fact that an agricultural employer may also be a private applicator does not affect the applicability of the WPS requirements to that person if they are covered by the rule due to the nature and scope of their activities as an agricultural employer.

Q9: When are establishments required to display the new pesticide safety information (i.e., "safety posters") that is required by the new rule revisions?

A: Establishments are not required to display the new pesticide safety information (i.e., "safety posters") until January 2, 2018.

Q10: Will EPA be developing new "safety posters" that comply with the new WPS requirements for displaying pesticide safety information?

A: Yes. EPA intends to develop a new "safety poster" that will meet the pesticide safety information display requirements. EPA expects to make it available by July 2017 so that employers will have access to complying materials prior to the January 2, 2018, implementation date for the requirements.

Q11: Can an employer or establishment choose to develop their own version or form of display for the new pesticide safety information (i.e., “safety poster”) required by the new rule revisions? Do they have to get their version or display approved by EPA?

A: Yes, an employer or establishment can choose to develop their own version or form of display for the new pesticide safety information (i.e., “safety poster”) as long as it meets the requirements of the rule. They do not have to get their version or display approved by EPA, but it must meet the requirements outlined in the rule.

Q12: Can an employer or establishment choose to display the new pesticide safety information (i.e., “safety poster”) required by the rule revisions before the new requirements go into effect? Will they be in violation of the WPS if they update the display before January 2, 2018?

A: Yes, an employer or establishment can choose to display the new pesticide safety information (i.e., “safety poster”) that is required by the rule revisions before the new requirements go into effect. No, an employer or establishment will not be in violation of the WPS if they update the display before January 2, 2018. EPA specifically amended the WPS to allow an employer/establishment to satisfy current requirements for a safety poster by complying with the new requirements for the display of pesticide safety information.

4. Designated Representative

Q1: The revised rule contains provisions that allow a worker or handler to have a “designated representative” obtain information on the worker or handler’s behalf. Who can be a designated representative?

A: A designated representative is a person who is designated by a worker or handler to request the pesticide hazard information (i.e., SDSs) and/or pesticide application information (that is required to be maintained by the employer and made accessible to workers/handlers) on their behalf. A designated representative must be designated in writing by the worker or handler, and can be anybody including but not limited to a relative, friend, another worker or handler, someone from a nonprofit organization, or a legal representative. A designated representative could also be a nurse or doctor, although the revised WPS allows treating medical personnel to request the SDS and pesticide application information without being a designated representative. A worker or handler can request information themselves, without a designated representative.

Q2: What information is a “designated representative” able to request access to on behalf of a worker/handler?

A: The provision in the final rule at § 170.311(b)(9) requires an employer to make available to a designated representative the same pesticide hazard information (i.e., safety data sheets (SDSs)) and pesticide application information that § 170.311(b) requires the employer to maintain and make accessible to workers/handlers. For example, designated representatives are entitled to the SDS and pesticide application information which includes the pesticide product name, EPA registration number and active ingredient(s); the crop or site treated and the location and description of the treated area; the date(s) and times the application started and ended; the duration of the Restricted-Entry Interval (REI) for that application. A designated representative can make the request on behalf of the worker or handler while the information is on display for 30 days at a central location, or during the two years it is required to be kept as a record.

Q3: Why does the revised rule allow a worker/handler to use a “designated representative” to request access to the pesticide hazard and application information when the rule already allows the worker/handler access to that information on their own?

A: The rule allows workers or handlers to get the information through a designated representative because there may be circumstances that prevent the worker/handler from being able to access it or request it themselves. The designated representative provision is intended to improve access to pesticide hazard and application information for workers and handlers who may not understand English, are afraid of retaliation or putting their job in jeopardy if they ask for it themselves, that have changed jobs, or that have relocated and don’t have transportation. If a worker/handler is injured or incapacitated and cannot be there in

person, the information could be requested by the treating medical personnel or a designated representative.

Q4: What information does a designated representative have to provide to an agricultural employer or establishment owner to request access to the pesticide hazard and application information on behalf of a worker or handler?

A: At a minimum, the designated representative must submit two things in writing to the agricultural employer in order to request access to the pesticide hazard and application information on behalf of a worker or handler:

- The name of the worker or handler being represented and a signed, written statement (written designation) from the worker or handler that designates the person as their representative to request information (the statement must include the worker's or handler's printed name and signature, the date of the designation, and the printed name and contact information for the designated representative); and
 - A description of the applicable SDSs and/or application information they would like access to and the date(s) for which the records are requested for the worker or handler's applicable dates of employment, and the type of work conducted by the worker or handler during that period.
-

5. Application Exclusion Zone (AEZ)

Q1: What is the “Application Exclusion Zone” or AEZ?

A: The “Application Exclusion Zone” or AEZ is a new term used in the WPS rule and refers to the area surrounding the pesticide application equipment that must be free of all persons other than appropriately trained and equipped handlers during pesticide applications.

Q2: How is the AEZ measured and the size of the AEZ determined?

A: The AEZ is measured from the application equipment. The AEZ also moves with the application equipment like a halo around the application equipment.



The AEZ is the purple area around the application equipment, it moves with the application equipment as it proceeds. The AEZ is generally within the treated area, except when the application equipment is near the edges of the treated area.

The size of an AEZ varies depending on the type of application and other factors, including droplet size, and height of nozzles above the planting medium. The AEZ is 100 feet for aerial, air blast, fumigant, smoke, mist and fog applications, as well as spray applications using very fine or fine droplet sizes (a volume median droplet diameter (VMD) size of less than 294 microns). An AEZ of 25 feet is required when the pesticide is sprayed using droplet sizes of medium or larger and from more than 12 inches above the plant medium. An application that does not fall into one of these categories does not require an AEZ.

Q3: I am confused as to whether the new WPS requirements related to the AEZ apply to the agricultural employer or the handler making the application. Please clarify.

A: There are several different requirements regarding the AEZ in the revised WPS. First, the WPS provision at 170.405(a)(1) establishes the applicable AEZ distances. This is a generic description of the AEZ and is independent of the location (on or off the establishment).

Second, the WPS provision at 170.405(a)(2) establishes a requirement for the agricultural employer to not allow any workers or other persons in the AEZ within the boundaries of the establishment until the application is complete. Compliance is required with this requirement beginning January 2, 2017.

Third, the provision at 170.505(b) establishes a requirement for the handler to suspend the application if any workers or other persons are anywhere in the AEZ. This requirement is NOT limited to the boundaries of the establishment. This applies to any area on or off the establishment within the AEZ while the application is ongoing. Please note that this is one of the WPS provisions that is delayed in implementation until January 2, 2018, to allow time for the handlers to receive training on the new requirement.

The requirement for the agricultural employer to keep persons out of the AEZ only applies within the boundaries of the establishment because the agricultural employer cannot be expected to control persons off the establishment. The “suspend application” provision does apply beyond the boundaries of the establishment because the handler (applicator) and handler employer DO have control over the pesticide application and are subject to a WPS requirement to apply the pesticide in any way that will not contact workers or other persons on or off the establishment.

Q4: I am confused as to whether the new WPS requirements related to the AEZ only apply within the boundaries of establishment. It appears there are different requirements. Please clarify and provide the text from the applicable sections of the rule that address AEZs.

A: The WPS provision at 170.405(a)(1) establishes the applicable AEZ distances. This is a generic description of the AEZ and is independent of the location (on or off the establishment).

The WPS provision at 170.405(a)(2) establishes the requirement for the agricultural employer to not allow any workers or other persons in the AEZ within the boundaries of the establishment until the application is complete. It is correct that the requirement on the agricultural employer to keep persons out of the AEZ only applies within the boundaries of the establishment. Compliance is required with this requirement beginning January 2, 2017.

However, other AEZ provisions do apply beyond the boundaries of the establishment. The provision at 170.505(a) establishes the requirement that the handler and handler employer must not allow the pesticide to contact any workers or other persons during application, either directly or through drift. This applies to any area on or off the establishment no matter what distance. (This is the same as it is in the 1992 WPS and on the labels of WPS-covered pesticides.) The provision at 170.505(b) establishes the requirement for the handler to suspend the application if any workers or other persons are anywhere in the AEZ. This requirement is NOT limited to the boundaries of the establishment. This applies to any area on or off the establishment within the AEZ while the application is ongoing. Please note that this is one of the WPS provisions that is delayed in implementation until January 2, 2018, to allow time for the handlers to receive training on the new requirement.

The requirement for the agricultural employer to keep persons out of the AEZ only applies within the boundaries of the establishment because the agricultural employer cannot be expected to control persons off the establishment. The “suspend application” provision does apply beyond the boundaries of the establishment because the handler (applicator) and handler employer DO have control over the pesticide application and are subject to a WPS

requirement to apply the pesticide in any way that will not contact workers or other persons on or off the establishment. The applicable regulatory text related to the WPS AEZ requirements are provided below.

170.405(a)(1):

The application exclusion zone is defined as follows:

(i) The application exclusion zone is the area that extends 100 feet horizontally from the application equipment in all directions during application when the pesticide is applied by any of the following methods:

(A) Aerially.

(B) Air blast application.

(C) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns).

(D) As a fumigant, smoke, mist, or fog.

(ii) The application exclusion zone is the area that extends 25 feet horizontally from the application equipment in all directions during application when the pesticide is applied not as in § 170.405(a)(1)(i)(A)–(D) and is sprayed from a height of greater than 12 inches from the planting medium using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater).

(iii) There is no application exclusion zone when the pesticide is applied in a manner other than those covered in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

170.405(a)(2)

During any outdoor production pesticide application, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the treated area or an application exclusion zone that is within the boundaries of the establishment until the application is complete.

170.505(a)

Prohibition from contacting workers and other persons with pesticides during application.

The handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler involved in the application.

170.505(b)

(b) *Suspending applications.* After January 1, 2018, the handler performing the application must immediately suspend a pesticide application if any worker or other person, other than an appropriately trained and equipped handler involved in the application, is in the

application exclusion zone described in § 170.405(a)(1) or the area specified in column B of the Table in § 170.405(b)(4).

Q5: What are the agricultural employer's responsibilities related to the pesticide applications and the new AEZ requirements, and when does this requirement go into effect?

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

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

(Note that if the agricultural employer is also the handler making the pesticide application, he or she must suspend a pesticide application if any worker or other person is within the AEZ beyond the boundary of the agricultural establishment.) The requirements related to the AEZ will go into effect January 2, 2017.

Q6: Does the agricultural employer have WPS responsibilities related to the new AEZ requirements if workers or other persons are off his/her establishment?

A: The AEZ requirement at §170.405(a) imposes no responsibilities on an agricultural employer in regard to workers or other persons who are not on the agricultural establishment as long as the agricultural employer is not the pesticide applicator. If the agricultural employer is also the handler making the pesticide application, then §170.505 would require him/her to suspend a pesticide application if any worker or other person is within the AEZ beyond the boundary of the agricultural establishment.

Q7: What are the applicator's/pesticide handler's responsibilities related to the pesticide applications and the new AEZ requirements, and when does this requirement go into effect?

A: Starting January 2, 2018, the handler performing the application must immediately suspend the pesticide application if any worker or other person, other than an appropriately trained and equipped handler involved in the application, is in the AEZ, regardless of whether such persons are on or off the establishment.

Q8: Why is the implementation date for the handler's requirement to suspend a pesticide application if workers or other persons are in the AEZ delayed until January 2, 2018?

A: The implementation date for this requirement is delayed until January 2, 2018, to allow time for pesticide handlers to receive training on the new requirement.

Q9: As noted above, the pesticide handler performing the application must immediately suspend the pesticide application if any worker or other person, other than an appropriately trained and equipped handler involved in the application, is in the AEZ, regardless of whether such persons are on or off the establishment. When and under what circumstances can a handler resume a pesticide application?

A: If the AEZ stretches beyond the property of the agricultural establishment being treated, and a worker or other person is in this portion of the AEZ, the applicator must temporarily suspend the application, and may not proceed until the applicator can ensure that the pesticide will not contact any persons that are in the AEZ area that extends beyond the boundary of the establishment. This is explained in more detail in EPA's Interpretive Policy.

The agricultural employer may not allow a pesticide to be applied, or a suspended application to be resumed, while any worker or other person on the establishment is in the treated area or within the AEZ. Note that both the handler employer and the handler are required to ensure that no workers or other persons, other than appropriately trained and equipped handlers involved in the application, are ever contacted by a pesticide, either directly or through drift, regardless of whether such persons are on or off the establishment or beyond the boundary of the AEZ.

6. Minimum Age

Q1: Does the minimum age apply to workers and handlers at experimental stations?

A: Yes, the minimum age applies to workers and handlers at an experimental station if the experimental station is an agricultural establishment engaged in the outdoor or enclosed space production of agricultural plants, as those terms are defined by the WPS. The only exemption from the minimum age requirements is under the exemption for owners of agricultural establishments and their immediate family.

7. Personal Protective Equipment (PPE)

Q1: If a potential handler employee has already gone through the annual respirator training, fit-testing procedure and medical evaluation process required by the new WPS respirator-related requirements at a previous employer (e.g., through their military duty), does the employee need to do it again through their new potential employer or can they provide their employer with the previous paperwork documenting completion of these requirements?

A: It is probable that the employee would need to complete the respirator fit-testing and the medical evaluation again because much of it is location- and activity-specific and respirator-specific. However, it is possible that the annual respirator training would not have to be repeated. Additional explanation is provided below:

- The medical evaluation is based on the conditions under which the respirator is worn. The handler employer has to provide the physician or licensed health care professional with information like the type and weight of the respirator, the duration and frequency of respirator use, the expected physical work effort, additional protective clothing and equipment that must be worn and temperature and humidity extremes that may be encountered. If the employee is going to be performing the same types of work and tasks (i.e., applying pesticides or very similar activity) under the same general conditions and situations and using the same respirator(s), then it could be possible that no new medical evaluation would be needed.
- Fit testing must be done using the exact same respirator (i.e., type, size, make and model) the person will use to conduct the range of handler activities they will be involved in. If the person uses the exact same respirator for the pesticide application work as he was fit-tested for previously, and within the last year, it would be valid for the new employer.
- Training is probably the most transferrable. In 29 CFR 1910.134(k)(4), OSHA's regs state "An employer who is able to demonstrate that a new employee has received training within the last 12 months that addresses the elements specified in paragraph (k)(1)(i) through (vii) is not required to repeat such training provided that ... the employee can demonstrate knowledge of those element(s). Previous training not repeated initially by the employer must be provided no later than 12 months from the date of the previous training." Therefore, if an employer can show that the employee has received training in the previous 12 months and ensures that the employee can demonstrate knowledge of the points covered in respirator training, the employer can rely on the previous training until it expires after a year.

Q2: What options do non-certified crop advisors have for selection of PPE when conducting crop-advising tasks during an REI?

A: The WPS provides an exception to the label-required PPE that is applicable to all crop advisors performing crop advising tasks during the REI (but not during an application). Non-certified crop advisors must wear PPE when performing crop advising tasks during the REI, but they may choose between any of the following options and select the least restrictive:

- The labeling-required PPE for handlers;
- The labeling-required PPE for early-entry workers; OR

- A “universal set” of PPE that is good for conducting any crop advising task during the REI (but NOT during application) which consists of the following: coveralls, shoes plus socks, waterproof gloves, and protective eyewear (eyewear only required if label required protective eyewear for handlers).

Q3: Does the revised WPS include new requirements for the packaging of agricultural pesticides with respect to water-soluble packaging?

A: No. The revised WPS does not include any new requirements for the packaging of agricultural pesticides in water-soluble packaging.

Q4: Does the revised WPS include new requirements mandating the use of closed systems for certain pesticide products or active ingredients? Please clarify the WPS requirements related to closed systems.

A: No. The revised WPS itself does not require or mandate the use of closed systems for any agricultural pesticides or active ingredients. Any requirements that closed systems must be used for mixing/loading and/or application are product-specific requirements that appear in the pesticide product labeling. The current WPS includes an exception from certain personal protective equipment (PPE) requirements for pesticide mixer/loaders who are using closed systems. This general approach is continued in the revised rule, although the revised rule includes more detail about the characteristics that a closed system must have in order to be eligible for this exemption. Specifically, 40 CFR 170.607(d) includes the following language:

“(2) The exceptions of paragraph (d)(1) of this section apply only in the following situations:

(i) Where the closed system removes the pesticide from its original container and transfers the pesticide product through connecting hoses, pipes and couplings that are sufficiently tight to prevent exposure of handlers to the pesticide product, except for the negligible escape associated with normal operation of the system.

(ii) When loading intact, sealed, water soluble packaging into a mixing tank or system. If the integrity of a water soluble packaging is compromised (for example, if the packaging is dissolved, broken, punctured, torn, or in any way allows its contents to escape), it is no longer a closed system and the labeling-specified personal protective equipment must be worn.”

Including water soluble packaging (that maintains its integrity) in the regulations as an example of a closed system is consistent with our current policy, which is spelled out in the WPS interpretive guidance.

8. Decontamination

Q1: I understand the revised WPS now requires the handler employer to provide at each mixing/loading site at least one system that is capable of delivering gently running water at a rate of least 0.4 gallons per minute for at least 15 minutes, or at least six gallons of water in containers suitable for providing a gentle eye-flush for about 15 minutes. Does the revised WPS still require employers to also provide all handlers with one pint of water in portable containers that are immediately available to each handler?

A: No. The requirement for the employer to provide handlers with one pint of water in portable containers that are immediately available to each handler only applies to handlers who are engaged in application activities, and not to handlers who are engaged in mixing/loading activities, and only if the handler is applying a pesticide product whose labeling requires protective eyewear for handlers.

The requirement for a handler employer to provide an eye wash system at a mixing/loading site only applies when a handler is mixing or loading a pesticide product whose labeling requires protective eyewear for handlers, or is mixing or loading any pesticide using a closed system operating under pressure. If either of these criteria is met, the employer is required to provide at each mixing/loading site, immediately available to the handler, at least one system that is capable of delivering gently running water at a rate of least 0.4 gallons per minute for at least 15 minutes, or at least six gallons of water in containers suitable for providing a gentle eye-flush for about 15 minutes. However, the employer does not need to provide handlers at the mix/load site with one pint of water in portable containers that are immediately available to each handler in addition to the eye-flush system described above.

9. Definitions

Q1: How is “other person” defined under the WPS? The term “other person” or “other persons” is used in the WPS rule, but it is not defined so we are not sure which persons are included when the term is used.

A: FIFRA section 2(s) defines “person” to mean “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” The same broad definition applies in the WPS. Thus where the § 170.305 definition of “owner” says a “*person* who has both leased such agricultural establishment to another *person*...” it means “an *individual, partnership, association, corporation, or any organized group of persons whether incorporated or not* who has both leased such agricultural establishment to another *individual, partnership, association, corporation, or any organized group of persons whether incorporated or not*...” And where § 170.505 says “The handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other *person*, other than an appropriately trained and equipped handler involved in the application...” it means the employer cannot allow the pesticide to contact any worker or any other *individual, partnership, association, corporation, or any organized group of persons whether incorporated or not*, other than properly trained and equipped handlers involved in the application.

Q2: Does the WPS cover all people “employed” by an agricultural establishment including “other persons”, or does the employer only have to provide WPS protections to persons who are considered workers or handlers under the rule? What about persons that may be on the establishment who are not employed by the establishment?

A: Most WPS protections and requirements are only applicable to persons on an agricultural establishment who are employed as workers or handlers. There are a very few circumstances where the agricultural employer is required to ensure that certain protections are extended to all other persons (not just workers or handlers and not only to persons employed by the establishment or persons on the establishment (see Q&A above related to the definition of “other person.”)). The WPS requirements for protecting workers and handlers do not apply to other employees working on the establishment who do not meet the WPS definition of worker or handler. The WPS requirements for protecting workers and handlers also do not apply to workers or handlers who are not “employed” by the establishment as defined by the WPS. For example, people participating in programs where their worker or handlers tasks are performed as part of an academic program or for educational credit are not considered employed and would not be considered workers or handlers under the WPS. The employer’s responsibilities related to workers and handlers only apply when people are employed as defined by the WPS (i.e., services are exchanged for salary or wages). Certain provisions of the WPS apply to all other persons regardless of whether the person is employed on the establishment or physically located on the establishment. When the WPS applies (i.e., agricultural establishments where agricultural pesticides have been used), the employer must always ensure pesticides are applied so they do not contact any worker or other person, either directly or through drift, other than an appropriately trained and equipped handler involved in the application. This means the

employer cannot allow the pesticide to contact workers or ANYONE other than properly trained and equipped handlers involved in the application.

10. Exemptions and Exceptions

Owner and Immediate Family Exemption

Q1: Is there an exemption or exception in the WPS for family farms?

A: No. The WPS does not provide an exception for “family farms” per se. The revised WPS exempts owners of agricultural establishments and members of their immediate family from certain requirements, as does the original WPS. It is important to note that: (1) no agricultural establishments that use WPS-covered pesticides are completely exempt from the WPS requirements, (2) owners/agricultural employers must provide full WPS protections for workers and handlers who are not in the owners’ immediate families, and (3) even owners and their immediate family members that qualify for the exemption must comply with some of the WPS requirements.

Q2: How has the WPS exemption for owners of agricultural establishments and their immediate family changed from the current exemption in the rule?

A: The key changes to the exemption for owners of agricultural establishments and their immediate family include the following:

- The definition of immediate family has been expanded to include: grandparents, grandchildren, in-laws, aunts, uncles, nieces, nephews, and first cousins. “First cousin” means the child of a parent’s sibling, i.e., the child of an aunt or uncle. This revised definition means more establishments qualify for the exemption and more owners and family members are exempt from many of the provisions of the new regulation.
- An exemption from the minimum age for handlers and early-entry workers has been added for owners and members of their immediate families.
- The exemption applies when a **majority** of the establishment is owned by persons who are “immediate family” members as defined in the WPS. EPA’s previous interpretation of the exemption required the establishment to be **wholly** owned by immediate family members.

The complete terms of WPS exemption for owners of agricultural establishments and their immediate family is in the final rule at § 170.601(a).

Q3: What new familial relationships are included in the revised definition of “immediate family” in the final WPS rule?

A: Immediate family now includes: spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. “First cousin” means the child of a parent’s sibling, i.e., the child of an aunt or uncle.

Q4: Who does the WPS exemption for owners of agricultural establishments and members of their immediate family apply to and what establishments qualify?

A: The WPS exemption for owners of agricultural establishments and members of their immediate family applies only to owners of agricultural establishments and members of their immediate family where a majority of an agricultural establishment is owned by one or more “immediate family” members as defined in the WPS. Where there are multiple owners of an establishment, a majority of the establishment must be owned by members of the same immediate family for the exemption to apply. The owner or agricultural employer must always provide all applicable WPS protections to workers and handlers employed by the agricultural establishment who are not members of the owner’s immediate family. The complete terms of WPS exemption for owners of agricultural establishments and their immediate family are in the final rule at § 170.601(a).

Q5: The WPS exemption for owners of agricultural establishments and members of their family applies only to establishments where a majority of an agricultural establishment is owned by one or more “immediate family” members as defined in the WPS. What is considered “majority ownership” under the revised WPS?

A: The exemption in the final rule applies to the owners and their immediate family members on any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family. A "majority of the establishment" means that more than 50 percent of the equity in the establishment is owned by one or more members of the same immediate family as defined in the WPS.

Q6: How does the exemption apply to workers and handlers who are employed by an establishment that is covered by the exemption for owners of agricultural establishments and immediate family members, but they themselves are not members of the owner’s immediate family?

A: The owner or agricultural employer must always provide all applicable WPS protections to workers and handlers employed by the establishment who are not members of the owner’s immediate family.

Q7: What WPS requirements are owners of agricultural establishments and their immediate family exempt from under the exemption at § 170.601(a) of the final rule?

A: The owner(s) of the establishment are **not** required to comply with the following provisions of the WPS for themselves or members of their immediate families when performing tasks as **workers**:

- Minimum age for early-entry workers
- Sections of the early-entry requirements
- Providing pesticide safety training or other safety information
- Cleaning, storing and maintaining personal protective equipment (PPE)
- Maintaining decontamination sites and supplies
- Providing notice of pesticide applications
- Posting information about pesticide applications and safety data sheets at a central location
- Providing emergency assistance

The owner(s) of the establishment are **not** required to comply with the following provisions of the WPS for themselves or members of their immediate families when performing tasks as **handlers**:

- Minimum age for handlers
- Providing pesticide safety training and other safety information such as restrictions during applications
- Knowledge of labeling and site-specific information and safe operation of equipment
- Ensuring proper use, cleaning, and maintenance of PPE and avoiding heat-related illness while using PPE
- Maintaining decontamination sites and supplies
- Providing emergency assistance.

Q8: What WPS requirements are owners of agricultural establishments and their immediate family required to comply with under the exemption at § 170.601(a) of the final rule?

A: Owners of agricultural establishments and their immediate family members are **REQUIRED** to comply with all of the following WPS requirements when using WPS-labeled products:

- They must wear the PPE and any other work attire required by the pesticide labeling
- They must keep out of the treated area until the restricted-entry interval (REI) required by the pesticide labeling expires
- They must ensure the pesticide is applied so it does not contact any other persons, including members of the immediate family
- They must ensure that all persons, including members of the immediate family, are kept out of the treated area and the application exclusion zone during the application of the pesticide
- They must ensure that the pesticide applied is only used in a manner consistent with the pesticide product's labeling
- They must ensure that any handler using a pesticide whose labeling requires a respirator, is provided a medical evaluation, fit testing and respirator training before using the respirator

- After January 1, 2018, any handler must suspend a pesticide application if a worker or other person is in the application exclusion zone during the application.

Q9: How do the new WPS requirements related to respirator use, (i.e., training, medical evaluation, fit-testing and recordkeeping) apply to owners of the establishment and members of their immediate families?

A: Employers must provide the protections related to respirator use at 40 CFR 170.507(b)(10) to all persons employed on the establishment, even themselves and members of the owner's immediate family.

Q10: Can owners of the establishment and members of their immediate families take advantage of the WPS exceptions for early entry into a treated area and the WPS exceptions to label-required PPE? Do the requirements of those exceptions apply?

A: Yes, they may use the exceptions for early entry and exception to label-required PPE provide for in the final WPS rule, but they must comply with all of the specific requirements applicable to each of the exceptions listed in the rule.

Q11: Why does the EPA feel that owners of agricultural establishments and their immediate families do not need the majority of the WPS protections when they likely face the same types of occupational pesticide exposure concerns as other farmworkers and pesticide handlers that are fully protected by the rule?

A: EPA is concerned that owners of agricultural establishments and their family members that are engaged in worker and handler activities have occupational pesticide exposure, and EPA believes that owners should provide the WPS protections to themselves and their immediate families. However, EPA is also aware that many small family-owned farms need flexibility to be able to manage regulatory costs and burden. Therefore, EPA has permitted the exemption to provide such farms and their owners with flexible options to manage these risks and the associated WPS requirements. EPA expects that family members will take necessary precautions to protect other family members and encourages owners and their families to follow WPS requirements to avoid exposure to pesticides and reduce the potential for pesticide-related illnesses and incidents.

Certified Crop Advisor Exemption

Q1: The WPS refers to Certified Crop Advisors as well as Crop Advisors. What is the difference between the two terms?

A: Under the WPS, a “crop advisor” is a person who assesses pest numbers, damage, pesticide distribution or the status or requirements of agricultural plants. The WPS does not require a “crop advisor” to have any specific certification or training to be recognized as a crop advisor under the rule. Certain WPS provisions apply only to certified crop advisors, such as § 170.601(b), which provides an exemption from certain personal protective equipment requirements only for crop advisors who are certified crop advisors. For purposes of the WPS, a “certified crop advisor” is a person who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA, or a State or Tribal agency responsible for pesticide enforcement.

Q2: What are the certified crop advisor programs that meet the requirements of the WPS for the certified crop advisor exemption and have been acknowledged as appropriate in writing by EPA, or a State or Tribal agency responsible for pesticide enforcement?

A: Crop advisors certified or licensed by the National Alliance of Independent Crop Consultants (NAICC), or through a crop advisor certification program approved by the State or Tribal agency responsible for pesticide enforcement are certified crop advisors for purposes of the WPS, as these programs have been acknowledged as appropriate in writing by EPA or the State or Tribal agency responsible for pesticide enforcement.

Q3: What does a certified crop advisor program have to do to meet the requirements of the revised WPS for the certified crop advisor exemption and be acknowledged as appropriate in writing by EPA, or a State or Tribal agency responsible for pesticide enforcement?

A: The crop advisor certification or licensing program must submit a request to EPA or the appropriate State or Tribal agency responsible for pesticide enforcement to have their program recognized in writing as meeting the WPS requirements for certified crop advisors under the exemption. The request must describe the requirements of the crop advisor certification or licensing program and ensure that the training component of the program requires pesticide safety training content that includes all the information in § 170.501(c)(3) of the WPS.

Q4: How has the certified crop advisor exemption changed under the revised WPS compared to the exemption under the current WPS?

A: The certified crop advisor exemption under the revised WPS only permits certified crop advisors to make their own determination for the appropriate PPE for entry into a treated area during a restricted-entry interval and substitute their self-determined set of PPE for the labeling-required PPE for themselves, and they are no longer able to make these determination

for non-certified crop advisor employees operating under their supervision. Additionally, the requirements of §§ 170.309(e), 170.309(f), 170.313(k), 170.503(a), 170.507 and 170.509 of the revised WPS do not apply to certified crop advisors provided the application is complete and the other conditions of the exemption are met. These requirements do apply to non-certified crop advisors, including non-certified crop advisor employees that are operating under the supervision of a certified crop advisor.

Q5: Do non-certified crop advisors need to be trained under the WPS?

A: Non-certified crop advisors are not exempt from the WPS training requirements, and they need to receive the appropriate WPS training before performing any crop advising activities in a pesticide treated area.

Q6: Do non-certified crop advisors need to be trained as workers or as handlers? When are crop advisors considered early-entry workers?

A: Crop advisors are considered handlers if they ever enter treated areas to conduct crop-advising activities while a restricted-entry interval (REI) is in effect, and they would need to be trained as handlers. Crop advisors are considered workers if they only enter treated areas after the REI has ended (but within 30 days after the REI), and they would only need to be trained as workers in this case. Crop advisors are never considered early entry workers – they are either considered to be handlers if they enter a treated area during an REI, or they are considered workers if they enter a treated area after the REI has expired.

Q7: Who has responsibility for providing WPS-required training for non-certified crop advisors if these persons are not exempt from WPS training requirements?

A: Who has responsibility for providing WPS-required training for non-certified crop advisors depends upon their employment situation. There are multiple employment situations that can be encountered with crop advisors (i.e., both certified crop advisors (CCAs) and non-certified crop advisors) on agricultural establishments. The crop advisors may be direct employees of an agricultural establishment (i.e., they are on the payroll of the agricultural establishment as an employee of the establishment doing crop advising tasks) in which case the agricultural employer on the agricultural establishment has the full responsibility for providing WPS training and other applicable WPS protections. The crop advisor may be hired by the agricultural establishment through a labor contractor (which is different than hired through a commercial pesticide handling establishment or employer), in which case the agricultural employer on the agricultural establishment still has the ultimate responsibility for providing WPS training and other applicable WPS protections, but there could also be shared or joint responsibilities for some protections depending on the contractual agreement between the agricultural establishment and the labor contractor. Crop advisors may also be considered employees of a “commercial pesticide handling establishment” (CPHE) providing “handling” (i.e., crop advising)

services for an agricultural establishment, in which case the CPHE is the handler employer and has the responsibility for providing applicable WPS handler training for their handlers as well as other applicable WPS protections for handlers. In this last case, the CCA or crop advisor may be an employee of a larger CPHE so they are the handlers working for an employer, or they may be a self-employed handler/CCA/crop advisor. NOTE: Crop advisors may be exempt from the WPS training requirements if they are “certified” as an applicator of restricted use pesticides under Part 171, in which case they would meet both handler and worker training requirements of the WPS.

Q8: I understand that non-certified crop advisors employed by, and operating under the supervision of a certified crop advisor are no longer exempt from WPS training requirements if they are performing crop advising tasks on an agricultural establishment during an REI or within 30 days after the REI. Can a certified crop advisor provide WPS training for their employees?

A: In order to train a non-certified crop advisor employee as a worker or handler under the WPS, the certified crop advisor would have to have undergone an EPA-approved Train-the-Trainer program for workers or handlers (as appropriate), or be certified as an applicator of restricted use pesticides under Part 171, or be designated as a trainer by EPA or the State or Tribal agency responsible for pesticide enforcement.

Q9: I understand that the certified crop advisor (CCA) exemption allows the CCA to ‘self-determine’ their PPE if they must enter a field to conduct crop advising activities during an REI. What options do non-certified crop advisors have for selection of PPE when conducting crop-advising tasks during an REI?

A: It is correct that the certified crop advisor (CCA) exemption allows the CCA to ‘self-determine’ their PPE if they must enter a field to conduct crop advising activities during an REI. A non-certified crop advisor performing crop advising tasks during the REI must wear one of the three following sets of PPE, but he/she may choose between any of the following options and select the least restrictive:

- The labeling-required PPE for handlers;
- The label-required PPE for early-entry workers; OR
- A “universal set” of PPE that is good for conducting any crop advising task during the REI (but NOT during application) which consists of the following: coveralls, shoes plus socks, waterproof gloves, and protective eyewear (eyewear only required if label required protective eyewear for handlers).