

PA Proposed Federal Agricultural Worker Protection Standard Revisions Proposed Rules

Matrix developed by Carol Black

Washington State University

Urban IPM and Pesticide Safety Education Program

Version 2. March 21, 2014 – if you find errors, contact ramsay@wsu.edu



Environmental Protection Agency (EPA) Proposed Revision Information: <http://www.epa.gov/oppfead1/safety/workers/proposed/index.html>

EPA Pre-Publication Copy: <http://www.epa.gov/oppfead1/safety/workers/proposed/pre-pub-wps-proposed-rule.pdf>

Outline:

- **Instructions to Submit Comments: page 2**
- General Information, Executive Summary: pages 2-6
- Background: pages 6-27
- Statutory Authority: pages 27-34
- Overview and Sources of Information: pages 34-56
- **Overview of Proposed Revisions: pages 56-248**
- Implementation, References, Review Requirements: pages 248-281
- Proposed Regulatory Language for 40 CFR Part 170: pages 282-345

EPA Purpose Statement: The EPA proposes to revise the existing Worker Protection Standard (WPS) at 40 CFR part 170 to reduce the incidence of occupational pesticide exposure and related illness among agricultural workers (workers) and pesticide handlers (handlers) covered by the rule. This regulation, in combination with other components of EPA's pesticide regulatory program, is intended to prevent unreasonable adverse effects of pesticides among pesticide applicators, workers, handlers, the general public, and vulnerable groups, such as minority and low-income populations.

States can use the last column to add their state rules that deviate from EPA's existing rule.

| Item | Proposed Revision | Existing Rule | State Worker Safety Rules |
|--|--|---|---------------------------|
| Training Related Revisions | | | |
| Training Interval Unit VII A. Pages 59-67 | Annual retraining interval for <u>workers</u> and <u>handlers</u> . | Train workers and handlers every 5 years . | |

| | | | |
|--|---|---|--|
| Training Verification Unit VII B. Pages 67-75 | Require recordkeeping of training for 2 years: items to be recorded: employee name/signature, date of birth, employer’s name/phone number, trainer name/credential to train, date of training, approved training materials used. | Recordkeeping of training is not required. Eliminate voluntary verification card system. | |
| | Employer provides copy of documentation to employee. | Recordkeeping of training is not required. | |
| Establishment-Specific Information Unit VII C. Pages 75-77 | Establishment-specific pesticide training for <u>workers</u> and <u>handlers</u> before WPS tasks begin , including location of pesticide safety information, application & hazard information, decontamination supplies, and how to obtain medical assistance. Consolidate requirements. | | |
| Establishment-Specific Information Unit VII D. Pages 77-86 | Trainer qualifications for <u>worker</u> training. Trainers would have to complete an EPA-approved train-the-trainer program or be designated by EPA or state/tribe agency as a trainer; trainers present throughout training. Certified applicators/handlers cannot train workers. Workers could still watch a video with a qualified trainer present. | Approved Trainers: Certified applicators, trained handlers, or someone designated as a trainer by EPA/State. Trainers only have to be present to answer questions, not throughout training. | |
| | Trainer qualifications for <u>handler</u> training – no change proposed to those who can provide training; trainers present throughout training. | Approved Trainers: Certified applicators, those who completed a train the trainer program or someone designated as a trainer by EPA/state/tribe. | |

| | | | |
|---|---|--|--|
| Expand Training Content Unit VII E. Pages 87-104 | Expand worker and handler training content to include 1) information on reducing take-home exposure, the hazards from residues on clothing, 2) enhanced emergency assistance, and 3) requirements for revised hazard communication information, 4) report use violations, 5) minimum age and other new requirements for early entry workers. | 11 basic training items for workers and 13 items for handlers. Minimal training on reducing take-home exposure, reporting use violations, and prohibition from employer retaliation. | |
| | Worker training expanded or enhanced to be 23 items , see list on pages 90-92. | No training provided on reducing take-home exposure. | |
| | Handler training expanded or enhanced to 40 items: PPE removal, new requirements including to stop (cease) the application if person enters treated area or entry-restricted area, respirator use, report use violations; list on pages 92-96. | No training provided on reducing take-home exposure, ceasing application, or detailed respirator use/decontamination. | |
| Retain AV Presentations Unit VII F. Pages 104-106 | Can use audio-visual materials but trainer must be present during training for questions and make sure free of distractions. | Can present safety training orally from written material or audio-visually. Can use video. | |
| Handler Training Exceptions Unit VII G. Pages 106-108 | Eliminates an exception that really did not exist; thus, clarifying that certified applicators are exempt from handler training | Certified applicators are exempt from handler training | |

| | | | |
|--|---|--|--|
| Posting and Oral Notification to Workers and Handlers | | | |
| Post/Oral Notification Timing Unit VIII A. Pages 108-117 | Post Field Warning Signs for treated areas when Restricted-Entry Interval (REI) is greater than 48 hours . Worker entry prohibited, “early-entry” workers allowed. Allow oral or posted notification for REIs under 48 hours . Outdoor production only. Indoor must post for those over 4 hours, and oral/post for 4 hours or less. Product label may require different notification. | Either oral or posted notification is acceptable for REIs of any length, unless the pesticide labeling requires both. Mandatory posting for all greenhouse applications is currently required. | |

| | | | |
|--|--|--|--|
| Warning Sign Location Unit VIII B. Pages 117-120 | Post warning sign visible from worker housing area if located within 100 feet of treated area and on the grower's property. | Post all usual points of entry to treated area or location offering maximum visibility, and along border of labor camps. | |
| Warning Sign Content Unit VIII C. Pages 120-124 | Sign to read Danger, Pesticides and Entry Restricted . Change shape to stop sign shape around graphic of man and hand. | Sign reads Danger, Pesticides and Keep Out. Circle used for man and hand. | |

| Hazard Communication – pesticide specific information/access/recordkeeping | | | |
|--|---|---|--|
| Pesticide-Specific Hazard Communication Unit IX A. Pages 124-134 | Retain application-specific information, labeling and Safety Data Sheets (SDS). For 2 years in paper or electronic form. Retained labels must correspond with labeling used at the application. Must provide access to (not necessarily a paper copy) the materials upon request. | Current worker/handler access at central location to record of: date, time and location of application, length of REI, pesticide product applied. No requirement to make hazard information (label, SDS) available to employee unless medical emergency. Recordkeeping is not required. | |
| | Require employer to make available to workers, handlers, or their authorized representatives application-specific information, labeling and Safety Data Sheets (SDS). Must provide access to (not necessarily a paper copy) materials upon request. | Current worker/handler access to record of: date, time and location of application, length of REI, pesticide product applied. No requirement to make safety information available to authorized representative. Recordkeeping is not required. | |
| Application Information – Content/Timing Unit IX B. Pages 134-138 | Add application items to be recorded/kept: specific crop or site treated, start and stop times, end date for REI. Record no later than the end of the day of the application. | Record and display pesticide application information at central location: location/description of treated area, product name, EPA registration number, active ingredient, time/date pesticide is to be applied, and REI. Displayed before workers are present. | |
| Application Information – Location/Access Unit IX C. Pages 138-143 | Remove burdensome central display requirement for posting application-specific information. Retain records for 2 years and make available to employee/representative . | Post application-specific information at a central display until 30 days after the REI expires. | |

| | | | |
|---|---|---|--|
| Application Information – Retain Records Unit IX D. Pages 143-146 | Retain hazard communication and application information for 2 years from the date of the end of the REI in paper or electronic form. | Retain records for 30 days past REI expiration. | |
|---|---|---|--|

| Information Exchange – Cease Application – Minimum Age | | | |
|--|---|---|--|
| Information Exchange Unit X. Pages 146-149 | Add 2 items to list to be exchanged: location of the Entry-Restricted Area and the start/end times of the application. | Current items to be exchanged: location/description of treated area, product name, EPA registration number, active ingredient, time/date pesticide is to be applied, oral/posting requirement, and REI. | |
| Handler: Suspend Application Unit XI. A Pages 149-151 | Handler or applicator must “immediately cease or suspend application” if any untrained/non-equipped person enters the treatment or entry restricted area. Retains the prohibition on application that results in contact. | Prohibits the handler from applying in such a way as to contact to a worker or other persons directly or through drift. | |
| Handler Minimum Age Unit XI. B Pages 151-1578 | Require pesticide handlers be 16 years old. Owners and members of the owner’s immediate family are exempt from this requirement of the WPS. | No minimum age | |
| Early Entry Worker Minimum Age Unit XII. A Pages 157-160 | Require early-entry workers (workers entering before REI expires) to be 16 years old. Owners and members of the owner’s immediate family are exempt from this requirement of the WPS. | No minimum age | |

| Early Entry during the Restricted Entry Interval | | | |
|---|--|--|--|
| Entry During REI Unit XII. B Pages 160-165 | Notification: specific exception, tasks permitted, PPE to be worn. | No detail on exception and tasks required. No record of notification required. | |
| | Record of oral notification including signature of each early-entry worker. Maintain record for 2 years. | No detail on exception and tasks required. No record of notification required. Notification of product hazards from label. | |

| | | | |
|---|--|--|--|
| Decontamination Supplies: Early Entry Workers Unit XII. C Pages 165-167 | Provide 3 gallons of water for early entry tasks under an REI. (revised to be same as handler) | Early entry workers – sufficient water | |
| Early Entry Worker Exception. Unit XII. D Pages 167-176 | Clarify no-contact exception does not allow for use of PPE to achieve no contact. | Prohibits employers from directing workers into treated area under REI. Exceptions: no-contact | |
| | Limit to EPA or state/tribe lead pesticide agency to declare an Agricultural Emergency exception. Limit to no more than 4 hours in 24 hour day that an early entry worker can be in treated area when double-notification products are applied. | Prohibits employers from directing workers into treated area under REI. Exceptions: Agricultural Emergencies. | |
| | Codify/clarify Limited Contact and Irrigation Exceptions . Remove the term unforeseen in relation to irrigation. | Prohibits employers from directing workers into treated area under REI. Exceptions: short-term, limited contact and irrigation activities. Double notification products excluded from exception. | |
| | Eliminate provision for specific exceptions requiring EPA approval | Specific exceptions to entry restrictions are allowed through administrative waiver process at EPA | |
| Buffers for Entry-Restricted Area Unit XII. E Pages 176-179 | Prohibit entry into 25-100 foot entry-restricted buffer areas around the farm/forest (but within the same property ownership) during pesticide application to protect persons from pesticide overspray and fumes. If labels have buffers for human exposure, label takes precedence. Cease application if untrained/unequipped person enters buffer area. | Currently applicable to nurseries and greenhouse only. | |

| Display of Basic Pesticide Safety Information (Safety Poster) | | | |
|---|--|--|--|
| Safety Information at Decontamination Site Unit XIII. A Pages 179-182 | Display pesticide safety information (safety poster) at decontamination sites in addition to a central location on the agricultural establishment. | Pesticide Safety poster at Central Location. | |
| Safety Information Content Unit XIII. B Pages 182-185 | Add state or tribal enforcement agency contact information to Safety Information and instructions to employees to seek medical care if they may have been made ill by pesticides. | Not required. | |

| Decontamination and Emergency Assistance | | | |
|--|---|---|--|
| Quantity of Water Unit XIV. A Pages 185-187 | Codify: 1 gallon of water per worker. Codify: 3 gallons of water per handler | Provide enough water for routine washing and emergency eyeflush. | |
| Natural Waters Unit XIV. B Pages 187-189 | Natural Waters may not replace required decontamination supply water, but may be used for decontamination if additional water is needed. | Can substitute clean, natural water for the potable water required for decontamination. | |
| Handler Ocular Decontamination Unit XIV. C Pages 189-193 | In addition to 1 pint of portable eyewash water, running water sufficient to flush eyes for 15 minutes must be available at permanent mix/load sites | Handlers must carry 1 pint of water for eyewash if labels require eye protection. | |
| Emergency Assistance Unit XV. Pages 194-201 | Emergency assistance includes providing information on each pesticide to which the employee might have been exposed. | Employers must provide obtainable information about the product the person may have been exposed to the employee or attending medical personnel | |
| | Provide transportation to the injured employee within 30 minutes | Employers must provide “prompt” emergency transportation for employees exposed to pesticides. | |

| Personal Protective Equipment | | | |
|--|--|--|--|
| Chemical Resistant PPE Unit XVI. A Pages 201-202 | “Chemical-resistant” means PPE must be identified by the manufacturer as chemical resistant. | “Chemical-resistant” means material that allows no measurable movement of the pesticide being used through the material during use. | |
| PPE Closed Systems Unit XVI. B Pages 202-211 | Add specific performance standard requirements for closed systems based on California (CA) standard to permit PPE exceptions. (Does not include the CA requirement to use closed systems for certain types of pesticides.) | Handlers can reduce PPE if a closed system is used. The closed system definition fails to provide specific criteria for the PPE exception. | |
| Contaminated PPE Unit XVI. C Pages 211-212 | Employer must render PPE that cannot be decontaminated to be unusable . | Employer must dispose of contaminated PPE that cannot be properly cleaned. | |
| Eye Protection for Open Cockpits Unit XVI. D Pages 212-213 | Use a helmet with a face shield lowered. | Protective eyewear may be replaced with a visor. | |
| PPE Respirators Unit XVI. E Pages 213-217 | Adopt the OSHA standard for respirators, including medical evaluation, fit test, and training. | Employer must provide the respirator listed on the pesticide labeling and ensure it fits. | |
| | Require respirator program recordkeeping. | Recordkeeping is not required. | |

| Exemptions and Exceptions | | | |
|--|--|--|--|
| Crops Advisor and Employee Exemption Unit XVIII. B Pages 230-233 | Eliminate exemption for employees supervised by certified or licensed crop advisors. Certified Crop Advisors still provided the exemption. | Crop advisor tasks can be performed during the REI by the certified crop advisor and employees without required PPE (CCA can make determination of appropriate PPE). | |
| | Eliminate exemption for employees supervised by certified or licensed crop advisors for worker decontamination, pesticide safety training and emergency assistance . | Crop advisor and employees exempt from requirements for decontamination, training, and emergency assistance. | |

| | | | |
|---|--|--|--|
| Time Frame to Train Workers Unit XVIII. C Pages 233-244 | Grace period is 2 days before full WPS training is required, expand the content of the abbreviated, pre-“grace period” training, and require distribution of information sheet listing training points. | Grace period is 5 days and there is less content to the abbreviated training, and no information sheet. | |
|---|--|--|--|

| Definitions – 170.5 pages 285-290 - (R)evised or (N)ew | | |
|---|---|--|
| Agricultural employer (R) | Any person who is an owner of, or is responsible for the management or condition of an agricultural establishment, and who employs any worker or handler. <i>(shortened)</i> | |
| Agricultural establishment (R) | Any farm, forest operation , or nursery engaged in the outdoor or enclosed space production of agricultural plants . <i>Greenhouse deleted.</i> | |
| Agricultural plant (R) | Any plant, or part thereof, grown, maintained, or otherwise produced for commercial production . | |
| Authorized employee representative (N) | A person designated by the worker or handler, orally or in writing, to request and obtain any information that the employer is required to provide upon request to the worker or handler. | |
| Closed System (N) | A system for mixing or loading pesticides that encloses the pesticide during removal of the pesticide from its original container and transfer, mixing, or loading of the pesticide product, mixtures or dilutions, and any rinse solution, if applicable, into a new container or application equipment, in such a manner that prevents the pesticide and any pesticide mixture or use dilution from contacting handlers or other persons before, during and after the transfer, except for negligible release associated with normal operation of the system. | |
| Commercial pesticide handler employer (N) | Any person, other than an agricultural employer, who employs any handler to perform handler activities on an agricultural establishment. | |
| Commercial pesticide handling establishment (R) | Any enterprise, other than an agricultural establishment, that provides pesticide handler or crop advising services to agricultural establishments. <i>(shortened)</i> | |

| | | |
|--------------------------------------|---|--|
| Commercial production (N) | Growing, maintaining or otherwise producing agricultural plants for sale or trade, for research or experimental purposes, or for use in their entirety in another location. Commercial production includes producing agricultural plants for use by the agricultural employer or agricultural establishment instead of purchasing the agricultural plants. | |
| Crop advisor (R) | Any person who is assessing pest numbers, damage, pesticide distribution, or the status or requirements of agricultural plants. <i>(deleted "hand-labor task reference")</i> | |
| Employ (N) | To obtain, directly or through a labor contractor , the services of a person in exchange for a salary or wages, including piece-rate wages, without regard to who may pay or who may receive the salary or wages. It includes obtaining the services of a self-employed person, an independent contractor, or a person compensated by a third party. | |
| Enclosed cab (N) | A cab with a nonporous barrier that totally surrounds the occupant(s) of the cab and prevents dermal contact with pesticides that are being applied outside of the cab. | |
| Enclosed space production (N) | A structure or space that is covered in whole or in part and that is large enough to permit a person to enter, i.e. Greenhouse. | |
| Entry-restricted area (N) | The area from which workers or other persons must be excluded during and after the pesticide application | |
| Farm (R) | Any agricultural establishment , other than a nursery or forest operation, engaged in the outdoor or enclosed production of agricultural plants | |
| Forest operation (N) | An agricultural establishment engaged in the outdoor production of any agricultural plant to produce any wood fiber or timber products, i.e., Forest | |
| Hand labor (R) | Any agricultural activity performed by hand or with hand tools that cause a worker to have substantial contact with plants, plant parts, or soil and other surfaces that may contain pesticide residues. <i>(deleted list)</i> | |

| | | |
|--------------------|---|--|
| <p>Handler (R)</p> | <p>Any person, including a self-employed person, who is employed by an agricultural employer or commercial pesticide handler employer and performs any of the following activities:</p> <ul style="list-style-type: none"> (1) Mixing, loading, or applying pesticides; (2) Disposing of pesticides; (3) Handling opened containers of pesticides; emptying, triple-rinsing, or cleaning pesticide containers according to pesticide product labeling instructions; or disposing of pesticide containers that have not been cleaned. The term does not include any person who is only handling unopened pesticide containers or pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions; (4) Acting as a flagger; (5) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues; (6) Assisting with the application of pesticides; (7) Entering an enclosed space after the application of a pesticide and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by §170.105(b)(3) or the labeling has been met to operate ventilation equipment, monitor air levels, or adjust or remove coverings used in fumigation; (8) Entering a treated area outdoors after application of any soil fumigant during the label-specified entry restricted period to adjust or remove coverings used in fumigation, such as tarpaulins; (9) Performing tasks as a crop advisor during any pesticide application or restricted-entry interval, or before the inhalation exposure level listed in the pesticide product labeling has been reached or one of the ventilation criteria established by §170.105(b)(3) or the pesticide product labeling has been met. <p>Handler employer means any person who is self-employed as a handler or who employs any handler.</p> | |
|--------------------|---|--|

| | | |
|--|---|--|
| Handler employer (R) | Any person who is self-employed as a handler or who employs any handler. <i>(deleted “for any type of compensation”)</i> | |
| Immediate Family (R) | 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, and sisters-in-law | |
| Labor contractor (R) | A person who employs workers or handlers to perform tasks on an agricultural establishment for an agricultural employer or a commercial pesticide handler employer. | |
| Nursery (R) | Any agricultural establishment engaged in the outdoor or enclosed space production of any agricultural plant to produce cut flowers or foliage, ferns, plants, or seedlings that will be used in part or their entirety in another location. Such plants include, but are not limited to, flowering and foliage plants or trees; tree seedlings; live Christmas trees; vegetable, fruit, and ornamental transplants; and turf grass produced for sod. | |
| Outdoor production (N) | Production of an agricultural plant in an outside open space or area that is not enclosed or covered in any way | |
| Owner (N) | Any person who has a present possessory interest (e.g., fee, leasehold, rental, or other) in an agricultural establishment. 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. | |
| Personal protective equipment (N) | Devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear. | |
| SDS - Safety Data Sheet (N) | OSHA standard Safety Data Sheet (SDS). <i>Replaces Material Safety Data Sheet (MSDS)</i> | |

| | | |
|---------------------------------------|--|--|
| <p>Use (N)</p> | <p>Use, as in “to use a pesticide” means any of the following:</p> <p>(1) Pre-application activities, including, but not limited to:</p> <ul style="list-style-type: none"> (i) Arranging for the application of the pesticide; (ii) Mixing and loading the pesticide; (iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of workers or handlers, providing decontamination supplies, providing pesticide information, use and care of personal protective equipment, providing emergency assistance, and heat stress management. <p>(2) Application of the pesticide.</p> <p>(3) Post-application activities intended to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during and after the restricted-entry interval, including responsibilities related to worker notification, training of workers or early entry workers, providing decontamination supplies, providing pesticide information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.</p> <p>(4) Other pesticide-related activities, including, but not limited to, transporting or storing pesticides that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.</p> | |
| <p>Worker (R)</p> | <p>Any person, including a self-employed person, who is employed and performs activities directly relating to the production of agricultural plants on an agricultural establishment. (<i>shortened</i>)</p> | |
| <p>Worker housing area (N)</p> | <p>Any place or area of land on or near an agricultural establishment where housing or space for housing is provided for workers or handlers by an agricultural employer, owner, labor contractor, or any other person responsible for the recruitment or employment of agricultural workers.</p> | |

| Options considered but not proposed by EPA | | |
|--|--|--|
| XVII. Pages 217-225 | Cholinesterase Monitoring for Handlers | |
| Unit XIV C. Pages 193-194 | Showers for Handler Decontamination | |
| Unit XVIII A. Pages 225-230 | Eliminate family exemption. | |