

2009 Handbook of Employment Regulations Affecting Florida Farm Employers and Workers: Worker Protection Standard -- EPA [Federal]¹

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Purpose

To provide a better understanding of the federal Worker Protection Standard (WPS), a federal regulation developed by the U.S. Environmental Protection Agency (EPA) designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests, and from the accidental exposure of workers and other persons to such pesticides. Handling of all other hazardous materials is addressed by OSHA's Hazardous Communication Standard (FE409).

Who Must Comply

The WPS applies when any pesticide is used at any agricultural and/or commercial pesticide handling establishment that employs for compensation agricultural workers and/or pesticide handlers for the production of agricultural plants.

More specifically, the EPA Worker Protection Standard (WPS) applies to you if:

- You own or manage a farm, forest, nursery, or greenhouse where pesticides are used in the production of agricultural plants and where workers are employed.

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- You have a contract for the services of agricultural workers to do tasks related to the production of agricultural plants at a farm, forest, nursery, or greenhouse. This includes labor contractors and others who contract with growers to supply agricultural laborers.
- You operate a business in which you or people you employ apply pesticides that are used for the production of agricultural plants.
- You operate a business in which you or people you employ perform tasks as a crop advisor at any farm, forest, nursery, or greenhouse.

Family farmers with no employees and their immediate family members are exempt from many WPS provisions. Family farmers, however, must observe the appropriate restricted-entry intervals (REIs) and must use the proper personal protective equipment (PPE). Both REIs and PPE requirements are listed on the pesticide label.

Main Goals of WPS

The *information* component of WPS is designed to ensure that employees will be informed about exposure to pesticides, including:

- Pesticide safety training for agricultural workers and pesticide handlers.
- Pesticide safety posters for agricultural workers and pesticide handlers.
- Access to labeling information for pesticide handlers and early entry workers.
- Access to specific information about pesticides and pesticide applications at each establishment.

The *protection* component ensures that employees will be protected from exposures to pesticides by requiring employers to:

- Prohibit handlers from applying pesticides in a way that exposes workers or other persons.
- Train workers about pesticide safety, how to correctly read field signs associated with pesticide applications, and where they can access information about recent pesticide applications on the farm.

- Exclude workers from areas being treated with pesticides.
- Exclude workers from areas that remain under a restricted entry interval (REI) with narrow exceptions.
- Protect early-entry workers who are doing permitted tasks in treated areas during a restricted entry interval (REI) via special instructions and personal protective equipment (PPE).
- Verbally notify workers about treated areas so they can avoid inadvertent exposure.
- Post all treated fields and provide a central location listing all treated fields, the products used, date of application, and the restricted entry interval.
- Protect handlers during handling tasks via personal protective equipment (PPE) and monitoring while handling highly toxic pesticides.

The *mitigation* of pesticide exposure component requires that employees have an opportunity to receive:

- Decontamination facilities with ample supplies of water, soap, and single-use towels for routine washing and emergency decontamination.
- Emergency assistance concerning transportation to a medical care facility if poisoned or injured by a pesticide.
- Information about the pesticide(s) to which they may have been exposed.

Pesticide Users Not Covered by WPS

The EPA Worker Protection Standard does not cover pesticides applied for the following reasons under 40 C.F.R., Part 170.130:

- On pastures or rangelands.

- For control of vertebrate pests such as rodents.
- As attractants or repellents in traps.
- For mosquito abatement via government-sponsored public pest control programs.
- On livestock or other animals, or in or around animal premises.
- Home fruit and vegetable gardens and home greenhouses (non-commercial).
- On plants that are in ornamental gardens, parks, golf courses, etc. intended only for decorative uses.
- Control of vegetation along rights-of-way, other non-crop areas, structural pest control, and wood preservation.
- Research uses of unregistered pesticides.

Standards for Workers

The WPS is designed to provide pesticide occupational safety protections to agricultural workers and pesticide handlers. Agricultural workers do hand labor, such as weeding, planting, cultivating, and harvesting for the production of agricultural in a agricultural establishment.

The following are WPS protection provisions that apply to agricultural workers under 40 C.F.R. 170, Subpart B.

Entry Restrictions during Pesticide Application

Agricultural employers may not allow or direct any person, other than appropriately trained and equipped handlers, to enter or to remain in the treated area(s). Specific entry rules are promulgated separately for nurseries and greenhouses.

Entry Restrictions after Pesticide Application

After the application of any pesticide on an agricultural establishment, the agricultural employer may not allow or direct any worker to enter or to remain in the treated area before the restricted-entry

interval specified on the pesticide labeling has expired. Some exceptions to this re-entry rule are permitted, such as no-contact activities, certain short-term activities, and agricultural emergencies.

For additional exceptions or waivers from the early entry requirements, contact:

Director, Office of Pesticide Programs

U.S. Environmental Protection Agency

401 M Street, SW

Washington, DC 20460

<http://www.epa.gov/pesticides>

Notice of Pesticide Applications

Notification to workers of pesticide applications is required as follows:

- For greenhouse operations, all pesticide applications must be posted with an approved EPA poster and, if the pesticide label has a statement requiring both the posting and oral notification to workers, the employer must also provide oral notification.
- For farms, nurseries, and/or forests, notification of pesticide application must consist of an approved EPA poster and oral notification if required by the pesticide label. If the pesticide label does not require both posting and oral notification, the employer must give notice of the application to the workers *either* by posting the sign or orally.

Posted Warning Signs

When posted warning signs are required, they must have the same legend and design as the standard fourteen inches by sixteen inches (14"x16") EPA WPS warning sign. EPA allows the use of smaller warning signs in nurseries and greenhouses under certain conditions. The warning signs must be posted no more than twenty-four hours before the application, remain posted during the *entire* restricted-entry interval, and be removed within three

days after the end of the application and any REI period before worker entry is permitted.

Oral Warnings

The agricultural employer must provide oral warnings to workers in a manner understandable to the worker.

The oral warning must consist of:

- The location and description of the treated area.
- The time during which entry is restricted.
- Instructions not to enter treated areas until restricted entry interval has expired.

Specific Information about Applications

The WPS requires that agricultural employers post the following specific information before the application takes place if workers will be on the establishment during application. Otherwise, information must be posted at the beginning of the workers' first work period and must be displayed within the last thirty days a pesticide has been applied or restricted entry interval (REI) has been in effect:

- Location and description of the treated area.
- The product name, EPA registration number, and active ingredients.
- The time and date pesticide is to be applied.
- The restricted entry interval for the pesticide.
- Safety poster must include emergency information, including the name, phone number, and address of the nearest emergency medical facility.
- EPA's WPS pesticide safety poster or its equivalent must be posted. (Refer to *Florida's Pesticide Safety Sheet: A Guide for Florida Farm Workers*. WPS poster can be obtained from the Florida Department of Agriculture and Consumer Services by phoning (386) 418-5523 or online at <http://www.flaes.org/pdf/PesticideSafetySheet.pdf>).

The above information must be displayed in a central location at the farm, nursery, or greenhouse where it is readily accessible and legible, and can be seen and read by workers during the required time.

Pesticide Safety Training for Workers

Each worker must be trained at least once every five years, unless the person is a certified applicator or a trained handler working under the supervision of a certified applicator.

Each agricultural worker must be trained at least once every five years, unless the person is a certified applicator or a trained handler working under the supervision of a certified applicator.

Before an agricultural worker enters an agricultural establishment where pesticides have been applied within thirty days, general pesticide safety information must be presented to workers either through oral communication or written materials or other means. This is the information contained in the Pesticide Safety Poster and in the FDACS Pesticide Safety Sheets. These sheets are available in English, Spanish, and Haitian/Creole. The information must be presented in a manner that the worker can understand using nontechnical terms and must respond to workers questions.

Before the sixth day that an agricultural worker enters any areas on the agricultural establishment, where within the last thirty days an application has been done and/or the restrict entry interval (REI) has been in effect, the worker must receive further training under 40 C.F.R., Part 170(d)(4). The person conducting the training must meet certain prescribed criteria.

Decontamination Facilities

Agricultural employers must provide a decontamination site or facilities for washing off pesticide residue. The decontamination facility must remain available for thirty days beyond the expiration of the restricted entry interval (REI). There is an exception under this section for pesticides listing REIs of four hours or less on the label, where agricultural employers are responsible for providing decontamination supplies for no less than seven days after the REI expiration time.

The employer is required to provide workers with enough water for routine washing and emergency eye flushing. The employer must provide soap and single-use towels at each decontamination facility in quantities sufficient to meet workers' needs.

In addition, the employer must assure that at least one pint of water is immediately available to each worker performing *early entry* activities for which pesticide labeling requires protective eyewear.

The decontamination facility must be reasonably accessible to and not more than one-fourth (1/4) mile from where workers are working. In most cases where employers are in compliance with the OSHA Field Sanitation Standard, they are in compliance with the EPA decontamination standard for workers.

Emergency Assistance

In the event a worker becomes ill while working and there is reason to believe pesticide exposure may be the cause, employers must make available prompt transportation for injured workers to an emergency medical facility.

The employer must also ensure that certain information be made available to medical personnel, including product name, EPA registration number and active ingredient, the antidote or recommended treatment listed on the pesticide's label, and the circumstances of the exposure.

Additional Pesticide Information

Under 487.2051, Florida Statutes, the agricultural employer must provide a written copy of pesticide information within two working days after a request for the information is made by a worker or a designated representative. In the event of a pesticide-related medical emergency, the agricultural employer must provide a written copy of the information promptly upon the request of the worker, the designated worker's representative, or medical personnel treating the worker.

Standards for Pesticide Handlers

The following are WPS protection provisions that apply to pesticide handlers under 40 C.F.R. 170, Subpart C. The regulation for pesticide handlers covers information about pesticide applications and notices of application to agricultural employers. Generally, a pesticide handler is any person who performs any tasks involving direct contact with pesticides. More specifically, a pesticide handler is any person employed to mix, load, apply, and/or dispose of pesticides and/or pesticide containers.

Restrictions during Application

The handler's employer and the handler must assure that no pesticide is applied in a way that may result in contact with any worker or other person other than an appropriately trained and equipped handler.

Specific Information about Applications

When handlers (except those employed by commercial pesticide handling establishments) are on an agricultural establishment and within the last thirty days a pesticide has been applied on the establishment or a restricted entry interval (REI) has been in effect, the handler's employer must display specific information about the pesticide. (See *Standards for Workers* section for details.)

Notice of Application to Agricultural Employees

Before the application of any pesticide on or in an agricultural establishment, the handler's employer must provide specified information to any agricultural employer for the establishment concerning the protection of agricultural workers, also known as commercial handler exchange of information. Agricultural employers must make sure that the commercial handler's employers receive specific information about treated areas that are under a restricted entry interval (REI) while a commercial handler is conducting pesticide handling tasks at their facilities.

For pesticide safety information, refer to *Standards for Workers* section for details.

Safety Training for Handlers

Pesticide handlers must be trained before performing any handling task. EPA has specific concepts that must be included in that training. Anyone who teaches WPS worker training or handler training must:

- Present the training orally or with the aid of written materials and/or audiovisual materials.
- Present the information in a manner trainees can understand, using a translator, if necessary.
- Be able to respond to trainees' questions.

Labeling and Site Specific Information

The handler's employer must assure that before the handler performs any handling activities, the handler has either read the product labeling or has been informed in a manner the handler can understand of all labeling requirements related to the safe use of the pesticide. In addition, the handler's employer must assure that the handler has access to the pesticide label information during the handling activity.

Safe Operation of Equipment

The handler's employer must assure that, before the handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

Personal Protective Equipment

Any person who performs tasks as a pesticide handler must use the clothing and personal protective equipment (PPE) specified on the labeling for use of the pesticide. The EPA's WPS regulations permit certain exceptions to the PPE specified on the product labeling.

The handler's employer must assure that all PPE is used correctly for its intended purpose and is used according to the manufacturer's instructions.

Also, the handler's employer must assure that all PPE is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse.

Who Is Responsible / Liable

EPA's compliance position is that anyone who meets the definition of agricultural employer, including overseers, operators, and labor contractors, is responsible for providing WPS protection to workers and for complying with WPS requirements. Under 40 C.F.R., Part 170.9(C), a person is liable for a penalty under FIFRA (Federal Insecticide Fungicide Rodenticide Act) if another person employed by or acting for (includes both employment and contractual relationships) the agricultural employer violates any provision of FIFRA.

WPS Protections to Workers Employed by Labor Contractors

Under the WPS, the agricultural employer is responsible for providing protections. When agricultural workers are employed on an establishment through a labor contractor, the establishment owner/operator and the labor contractor are jointly responsible for providing WPS protections to workers. EPA, however, will likely decide on a case-by-case basis who should be held accountable for a given violation.

The EPA suggests that when workers are hired through a labor contractor, the contract between the owner/operator of the establishment and the labor contractor should specify which protections under the WPS are to be provided by each party.

Federal Enforcement Actions

Penalties for failure to comply with the WPS are the same as those for using a pesticide inconsistent with the label.

Generally, fines are up to \$1,000 per offense for private applicators, including owners/operators of agricultural operations, and up to \$5,000 per offense for commercial applicators.

Criminal penalties may apply for knowingly violating the standard. They can be up to \$1,000 and thirty days in jail for owner/operators and up to \$25,000 and one year in jail for commercial applicators.

State Enforcement Actions

If you are found not in compliance with WPS, you may encounter one of the following actions:

- First time offenders are fined for:
- Failure to comply with worker/handler REI.
- Failure to post treated areas to prevent entry during a REI.
- Failure to provide essential PPE.
- Other first time violations receive a warning letter.
- Second time offenders will be issued with an administrative fine if second offense is within three years of the first offense.
- \$500 to \$10,000 fine per violation.

Retaliation Prohibited

Employers must not prevent or discourage any worker or handler from complying or attempting to comply with the WPS. Also, employers must not fire nor otherwise retaliate against any worker or handler who attempts to comply.

Related Information

- **Protect Yourself From Pesticides: Guide for Pesticide Handlers**, U.S. EPA, EPA 735-B-93-003, Washington, D.C., December 1993
- **The Worker Protection Standard For Agricultural Pesticide: How to Comply: What Employers Need to Know**, U.S. EPA, EPA 735-B-93-001, Washington, D.C., July 1993
- **Labor Bulletins No. 495, 496, 497, 503, 504, 508 and 511**. Florida Fruit and Vegetable Association, Orlando, FL

Responsible Agency

National Office

Director, Office of Pesticide Programs
 U.S. Environmental Protection Agency
 401 M Street, SW
 Washington, DC 20460
<http://www.epa.gov/pesticides>

Regional Office

U.S. Environmental Protection Agency, Region 4
 61 Forsyth Street SW
 Atlanta, GA 30303-3104
 (404) 562-9900 or 1(800) 241-1754
<http://www.epa.gov/region4/home/phonenumbers.html>

State Agency

Florida Department of Agriculture and Consumer Services
 Division of Agriculture and Environmental Services
 Bureau of Compliance Monitoring
 3125 Conner Boulevard
 Tallahassee, FL 32399
 (850) 488-8731
<http://www.flaes.org>