



Worker Protection Standard Agricultural Inspection Guidance

U.S. Environmental Protection Agency
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U.S. EPA Worker Protection Standard Agricultural Inspection Guidance

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I. INTRODUCTION

The purpose of this Guidance is to provide useful information to inspectors on how to conduct thorough and nationally consistent agricultural inspections under EPA's Worker Protection Standards¹ (WPS) that are also in conformance with Title VI of the Civil Rights Act² and the Rehabilitation Act.³

This Guidance highlights the focus areas for agricultural WPS inspections and provides useful information to inspectors, as well as lead agencies, about how to involve individuals with limited English proficiency (LEP) or disabilities in the inspection process.

This WPS Agricultural Inspection Guidance supersedes the EPA WPS Inspection Guidance released in April 2004. This Guidance represents EPA's recommended procedures and content for conducting complete FIFRA WPS agricultural inspections. It provides the minimal criteria of coverage for all future routine and for-cause WPS agricultural inspections conducted by EPA, state, territorial and tribal pesticide regulatory agencies. Deviations from this Guidance on the part of any duly authorized official, inspector, or agent shall not be a defense in any enforcement action; nor shall deviation from this Guidance constitute grounds for rendering the evidence obtained thereby inadmissible in a court of law.

II. BACKGROUND

A. Worker Protection Standard (WPS)

The WPS was promulgated in 1992 under Section 25 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA). The WPS is 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 also from accidental exposure of workers and other persons to such pesticides. The scope of the regulation includes not only workers performing hand labor operations in fields treated with pesticides, but also workers in forests, nurseries, and greenhouses, and employees who handle (mix, load, apply, etc.) pesticides in these locations.

The failure to comply with WPS may result in an enforcement action. FIFRA §12(a)(2)(G) states that it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling. When

¹ WPS Rule at: <http://www.epa.gov/pesticides/safety/workers/PART170.htm>

² Title VI of Civil Rights Act of 1964 at: <http://www.epa.gov/civilrights/t6facts.htm>

³ <http://www.ada.gov>

the WPS is referenced on a pesticide label, all users must comply with all of the requirements of the WPS, except for those that are inconsistent with product-specific instructions on the labeling.

FIFRA authorizes the U.S. Environmental Protection Agency (EPA) to grant primary pesticide enforcement responsibility to pesticide lead agencies in states, tribes, and territories (hereafter “state” is used to refer to all pesticide lead agencies) for pesticide use violations (FIFRA §26). A lead agency has responsibility to ensure compliance with the Worker Protection Standard.

In March 2000, the General Accounting Office (GAO) recommended that EPA strengthen its oversight of states’ implementation and enforcement of WPS, and clearly define “what constitutes a WPS inspection.”⁴ The GAO Report stated that EPA needed to establish minimum requirements for a WPS inspection for reporting purposes under state cooperative agreements. Beginning in June 2000, EPA worked with the states to address this GAO recommendation. This work resulted in the EPA WPS Routine Agricultural-Use Inspection Guidance issued August 21, 2001, to state pesticide regulatory agencies to implement beginning in Fiscal Year 2002-2003. After two years of implementation and new directions in the WPS enforcement program, the guidance was again revised in April 2004. This Guidance document revises, and supersedes, the April 2004 guidance to address recent implementation issues associated with the requirements to provide “meaningful access” under Title VI of the Civil Rights Act.

B. Title VI of the Civil Rights Act of 1964

Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. As a recipient of federal financial assistance, a state is obligated to comply with the requirements concerning Limited English Proficiency (LEP). The manner in which a state must provide language services may be determined by balancing four factors:

- The number or proportion of LEP individuals eligible to be served or likely to be encountered by the WPS program;
- The frequency that LEP individuals come in contact with the WPS program;
- The nature and importance of the particular activity or service provided by the WPS program; and
- The resources available to the state.⁵

See Section III and Section IV for more information on how Title VI affects WPS inspections.

⁴ See “Pesticides: Improvements Needed to Ensure the Safety of Farm Workers and Their Children” (GAO/RCED-00-40): <http://www.gao.gov/new.items/rc00040.pdf>

⁵ See Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 35,602 (June 25, 2004) at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf.

C. The Rehabilitation Act of 1973

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

See Section III and Section IV for more information on how the Rehabilitation Act affects WPS inspections.

III. DEFINING WPS AGRICULTURAL INSPECTIONS

Agricultural establishments are defined in 40 CFR § 170.3 as farms, nurseries, greenhouses and forests. EPA and states conduct WPS agricultural inspections at agricultural establishments to ensure that users of pesticides subject to WPS comply with the requirements during the critical periods of pesticide use. These inspections examine the practices of agricultural, handler, and farm labor contractor employers and their employees to ensure that they are in compliance with: (1) product-specific WPS requirements as prescribed on pesticide product labeling, such as personal protective equipment (PPE), restricted entry intervals (REIs) and oral and posted warnings used on the establishment; and (2) generic WPS requirements incorporated by the reference statement that appears on the labeling, such as pesticide safety information, decontamination supplies, safety training, emergency assistance and worker notification.

A. Inspection Goals

The goals in conducting WPS agricultural inspections include monitoring employer compliance, documenting violations, addressing noncompliance and increasing handler and worker safety. In addition, inspectors ensure compliance with Title VI of the Civil Rights Act and with the Rehabilitation Act. WPS inspections should be performed during the appropriate periods of the agricultural production season, such as: (1) during and after pesticide application; (2) during an REI; or (3) after an REI has expired plus 30 days. Noncompliance with WPS may result in pesticide violations—specifically, FIFRA §12(a)(2)(G) and FIFRA § 2(ee), whereby it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

B. Routine (Non-Complaint Based) Inspections

All applicable⁶ WPS compliance categories and their elements must be captured during a routine WPS agricultural-use inspection to ensure compliance with the basic components of the WPS. This Guidance document includes: (1) suggested procedures for WPS agricultural-use inspections; (2) guidance on site-specific information to collect; (3) assistance to inspectors in interviewing the agricultural employer, handler employer and workers/handlers, as well as in collecting pertinent information and evidence for determining employer compliance with the WPS; and (4) clarification of when a WPS agricultural inspection should be reported to the EPA on EPA Form WPS 5700-33H.

C. For-Cause (Complaint Based) Inspections

The WPS inspection categories and elements presented herein also apply to for-cause (tip or complaint) inspections. During WPS for-cause inspections, states should be thorough in examining establishment/employer compliance with all applicable WPS categories/elements, other product labeling requirements and any other WPS provisions. Every effort should be made to interview the complainant and two or more employees (workers and handlers). For-cause inspections require more detailed documentation of WPS compliance and non-compliance by the establishment/employer than routine inspections.

D. Other Types of WPS Agricultural Inspections

This Guidance applies to WPS inspections performed at commercial handling establishments, immediate family exempted facilities and fields operated by farm labor contractors (FLCs). EPA understands and acknowledges that in the completion of these inspections, one or more WPS categories/elements as itemized in Section V of this Guidance may not apply and therefore will not be addressed during these inspections. Inspectors should include an explanation in the inspection report describing why particular categories/elements were not addressed. These inspections may be counted as WPS inspections on the EPA WPS 5700-33H Form when all applicable WPS categories/elements have been examined.

E. Interviews

Because the intent of the WPS is to ensure that each worker and handler receives the protections required by WPS, EPA expects all inspectors will attempt to interview workers and handlers present at the time of inspection as part of their inspection procedures. These interviews are a critical part of assessing compliance during routine WPS agricultural inspections and are essential for obtaining information in WPS for-cause inspections. Inspectors should conduct employee interviews even if they

⁶ An inspection of all applicable categories and elements refers to examining all WPS components of compliance that may apply to that particular establishment/employer being inspected at that time. Inspectors should include a written explanation in the inspection report as to why particular WPS categories/elements are not examined during the inspection. (See section V.)

have obtained an admission of guilt from the employer or obtained enough evidence for violations. EPA believes that additional employee interviews under these circumstances may uncover further violations undetected through the employer interview.

Interviews should be conducted in private without the presence of an employer or supervisor. If private interviews are not suitable, safe or appropriate on the agricultural establishment during the inspection, then employee interviews may be conducted at a location and time convenient for the worker, such as the labor camp, private residence or other agreed upon location. Telephone interviews are recommended when a WPS complainant or witness is unavailable for an in-person interview and is willing to discuss the complaint with the inspector over the telephone. Telephone interviews can serve as useful information-gathering to obtain preliminary information to initiate an investigation and to gather additional information during an ongoing investigation. Interpretation services may be necessary to complete the interviews. Additional interview methods also could include using video conferencing if available.

1. Routine Inspection Interviews

During routine WPS inspections inspectors must attempt to interview at least one worker and one handler present at the time of inspection as a part of their inspection procedure. When no interviews are conducted the inspector must provide an explanation in the final inspection report that may include, but is not limited to, the following situations:

- (1) No workers or handlers were present at the time of the inspection;
- (2) Employees would not consent to being interviewed because of refusal, fear of retaliation or loss of wages, or another reason; or
- (3) The inspector was unable to interview workers/handlers because of language barriers but all other WPS components of compliance which may apply to that establishment are met.

If during a routine WPS inspection, an inspector observes a WPS violation or a worker or handler attempts to provide information regarding a possible violation but is unable to because of a language barrier, then the inspector must conduct interviews. The inspector cannot use the language barriers presented by a complainant worker/handler or other critical witness with limited English proficiency (LEP) as an excuse for not conducting interviews. Interpretation services may be necessary to complete the interviews.

2. For-Cause Inspection Interviews

During WPS for-cause inspections, interviews of an employee complainant or critical witness must be conducted. If there is a language barrier, an inspector must overcome that barrier to conduct interviews of employee-complainants or other critical witnesses. Language barriers are not an acceptable reason for failure to conduct these interviews.

Regardless of the type of inspection, workers/handlers with communication barriers arising from a disability should be interviewed if the inspector would have interviewed that person but for his/her disability.

Justification for not interviewing an employee complainant or critical witness must be included in the final inspection report. Refusal of the employer to consent to their employees being interviewed during normal work hours is not an acceptable reason for not interviewing the complainant or critical witness. The inspector should arrange for an interview at another date, time and location outside of normal work hours. Only in rare circumstances may the justification rely on a language barrier. For example, if a critical witness's primary language cannot be accommodated during a for-cause inspection because: (1) an interpreter cannot be obtained and (2) the language at issue is spoken by only a very small percentage of the service population⁷ the inspector can make a note he or she attempted to communicate with the individual but was unsuccessful. If a worker speaking that language sought to file a complaint, the state has a heightened duty to seek out ways to provide interpretation services.

Other acceptable justifications for not interviewing an employee complainant or other critical witness may include:

- (1) Employee refusal to be interviewed; or
- (2) The inability of the state to locate or find contact information for an employee who has left their employment.

All attempts to contact the complainant/witness must be documented in the case file.

3. Title VI of the Civil Rights Act of 1964 and Limited English Proficiency

A state's obligation to provide meaningful access to LEP individuals stems from Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on national origin. The manner in which a state must provide language services may be determined by balancing four factors:

- (1) The number or proportion of LEP individuals eligible to be served or likely to be encountered by the WPS program;
 - (2) The frequency that LEP individuals come in contact with the WPS program;
 - (3) The nature and importance of the particular activity or service provided by the WPS program;
- and

⁷ EPA's LEP guidance recommends that recipients of EPA assistance identify those languages spoken by the population served by recipients' programs. Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 35,602 (June 25, 2004) at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf.

(4) The resources available to the state.⁸

Providing language interpretation services to interview complainants and critical witnesses will assist states in meeting their LEP obligations in these circumstances. A critical witness is a witness who is considered essential to completing an inspection. States should use their discretion to decide which witnesses are essential for completing an inspection, without regard to their language ability. In each case, the decision about whom to interview will depend on the particular facts of each inspection. For example, if an inspector identifies a witness who is essential to the completion of an inspection and discovers that the witness is LEP, the inspector must overcome the language barrier. In general, inspectors should anticipate the presence of LEP or disabled workers, or both. For example, if the workforce of an area is known to include a high proportion of LEP individuals who are Spanish speakers, inspectors should be prepared to conduct interviews in Spanish or provide a Spanish-speaking interpreter. The inspector should conduct follow-up interviews to address language or communication barriers if interviews of the employee-complainant or critical witness could not be conducted at the time of the initial inspection.

For further information regarding LEP, refer to <http://www.lep.gov> and state civil rights resources.

4. The Rehabilitation Act of 1973 and Disability-Related Communication Barriers

A state's obligation to accommodate a communication barrier due to an individual's disability, such as a vision, hearing or speech impairment, stems from § 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability. Specifically, the state must make a reasonable accommodation for known physical or mental limitations of an individual with a disability. For example, when interviewing a worker with a hearing impairment, using a sign language interpreter may be a suitable accommodation. Interviews also could be conducted in writing. The inspector may not omit an interview if the inspector would have normally interviewed that person but for their disability. In other words, if an inspector would have interviewed that particular worker if he or she did not have a disability, then the inspector must make an accommodation for that worker and conduct the interview. If the inspector would not have interviewed that particular worker regardless of his or her disability, then no interview is necessary. In rare instances, the state can demonstrate that the accommodation would impose an undue hardship, which the courts have established as a very high burden to meet. Undue hardship means significant difficulty or expense and focuses on the resources and circumstances of the state agency in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, and disruptive or those that would fundamentally alter the nature or operation of the business. For further information regarding reasonable accommodations for disabilities, refer to <http://www.ada.gov> and state civil rights resources.

⁸ See Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 35,602 (June 25, 2004) at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf.

States are strongly encouraged to develop ways to overcome communication and language barriers, such as using an on-site interpreter, hiring bilingual inspectors, using interpreter resources and services, utilizing farm labor groups (for routine inspections) to provide volunteer interpreters or conducting telephone interviews with interpreters when in-person interviews are not feasible.

Advanced planning helps ensure that these resources are in place and available when the need arises.

EPA regions are expected to query states annually as to their efforts to improve their capacity to overcome language and communication barriers and remedy noted deficiencies.

F. WPS Violators and Re-Inspections

Re-inspections are considered an important component of state enforcement targeting to verify that previous WPS violations have been corrected and that the establishment remains in full compliance with the WPS. EPA recommends that re-inspections be performed for a percentage of previous WPS violators. The number and percentage of re-inspections should be negotiated annually between the state and EPA.

States may conduct some re-inspections shortly after an initial agricultural inspection at the same establishment or employer in order to determine whether the previously identified WPS violations have been corrected. If these re-inspections consist only of the examination of those WPS categories/elements in which the employer was non-compliant on the previous inspection, then the state cannot count this re-inspection as a new or additional WPS inspection. Because not all applicable elements were covered, this is considered a continuation of the initial inspection. This re-inspection, however, may be counted on the general EPA 5700-33H form as an agricultural-use inspection. States may consider several factors to determine which establishments/employers to re-inspect, such as: the number and severity of WPS violations; previous history of FIFRA non-compliance; associated alleged employee pesticide exposures; state enforcement response policy; staff workload; department resources; and the employer's sincere interest to come into compliance. Correspondence from the establishment/employer confirming correction of violation(s) cited earlier by the state does not count as a formal re-inspection.

If WPS re-inspections consist of the examination of all applicable categories/elements within this Guidance (including employee interviews or written justification as to why interviews are not performed) and this case is treated by the state as a separate case from an earlier inspection at the same establishment/employer, then this new re-inspection may be counted as a WPS inspection separately on the EPA WPS 5700-33H Form.

G. Maintaining Flexibility through Partnership

EPA recognizes that state pesticide inspection programs may choose to perform a combination of compliance assistance and monitoring activities at agricultural establishments. EPA recognizes that states are able to conduct WPS inspections and take enforcement actions both within and outside of the REI plus 30-day windows of time. However, all effort should be made to conduct WPS inspections

during the growing season when pesticide applications are occurring and when WPS requirements are in effect.

IV. WPS AGRICULTURAL INSPECTIONS PROCEDURE

The following is a brief summary of the federal inspection procedures for WPS inspections. EPA, states and tribes are encouraged to incorporate these procedures into WPS agricultural inspections.

Inspectors should follow established state procedures unless using federal credentials to conduct the inspection.

- Gain entry—present identification, present credentials and issue a Notice of Inspection (NOI) ⁹.
- Perform the Inspection—use tools to facilitate adequate coverage of the WPS inspection categories and elements, such as checklists, field notebooks, questionnaires, interviews and surveys.
- Interview the employer.
- Conduct label review of pesticides on site—note the requirement for personal protective equipment (PPE), REI, decontamination supplies, etc.
- Collect evidence—make copies of training records, pesticide labels and application records; take photos of central location, mix/load sites, pesticides being applied, potential violations observed; and collect signed statements from interviewees.
- Perform worker and handler Interviews—conduct in private, without the presence of an employer or supervisor. If no interviews are conducted, the final inspection report must provide an explanation. States/tribes are strongly encouraged to develop ways to overcome language and communication barriers (see Section III. E.).
- Prepare inspection report—include a written narrative; attach supportive documentation, interviews and statements, as necessary and in accordance with inspection guidance procedures to support suspected violations. The final report should establish the compliance status of an establishment in a factual, objective and consistent manner.

⁹ FIFRA requires that a Notice of Inspection (NOI) be provided whenever an inspection is to be conducted under the authority of FIFRA. When federal EPA credentials are used to conduct a FIFRA inspection, the inspector must issue a NOI to the establishment owner or person being inspected. States may have similar requirements when conducting inspections under their authority.

V. BASIC WPS COMPLIANCE INSPECTION CATEGORIES AND ELEMENTS FOR WPS AGRICULTURAL INSPECTIONS

In the interest of national consistency, EPA, in cooperation with the states, developed the following procedures and inspection elements under compliance categories for both the WPS Tier I and Tier II compliance monitoring inspections. These inspection elements are to be incorporated into the inspection tools,¹⁰ SOPs and training programs as appropriate. With the release of this revised Guidance, there is an expectation that all states will re-examine their existing WPS inspection forms and checklists in comparison to this Guidance to ensure that all procedures are appropriate and that all listed categories and elements are included.

EPA also recognizes that direct observation of employees engaged in handling pesticides or field worker activity is the preferred method of determining compliance. However, inspectors still must attempt to interview workers and handlers in all inspections in order for the inspection to be considered complete for federal reporting. See Section III.E, for how to address language and communication barriers during interviews.

A. EPA-Recommended Site-Specific Information Collection

States should consider their entire pesticide program in determining the appropriate procedures for collection and documentation of site-specific information.

Document:

- Whether the inspection is unannounced or announced.
- The agricultural establishment type—farm, nursery, greenhouse or forest as defined by 40 CFR §170.3.
- Estimated total area.
- Owner and manager of the establishment.
- Types of crops grown for commercial or research purposes.
- Who applies pesticides—self apply, by an employee, for-hire commercial applicator or a combination thereof.
- Who has control over or directs pesticide use.
- Number of certified applicators.
- Estimated number of workers and handlers present (1) during the inspection; (2) within the last 30 days; and (3) when a pesticide was last applied.
- Estimated number of permanent and seasonal workers and handlers working for the establishment.

¹⁰ Such as, but not limited to, checklist, survey and questionnaires.

- Pesticide product label information for the applications administered and the last date(s) of application(s).
- Whether the pesticide label includes WPS reference statement.
- List product name and EPA Registration Number, REI, type of notification and required PPE.

B. Employer/Supervisor Interviews

The term “agricultural employer”, as defined by 40 CFR §170.3, may include owners and managers of agricultural establishments, employers of agricultural workers and handlers, commercial applicator employers and farm labor contractors. These employers are responsible for complying with all WPS regulations in 40 CFR part 170. The inspector should conduct an agricultural establishment site visit that includes: (1) examination of the pesticide storage area; (2) review of pesticides for specific WPS labeling requirements (PPE, double notification, REI, etc.); (3) interviews; and (4) evaluation of all applicable inspection categories and their elements as itemized below to determine the compliance with the provisions of the WPS.

1. Pesticide Safety Training

The applicable regulations are:

Worker Pesticide Safety Training (40 CFR §170.130)—an agricultural employer shall assure that each worker has been trained according to this section.

Handler Pesticide Safety Training (40 CFR §170.230)—a handler employer shall assure each handler has been trained in accordance with this section.

An inspector must:

- Verify that workers and handlers received either basic pesticide safety information or full training before they entered treated areas.
- Identify who trains workers and handlers.
- Describe the trainer’s qualifications.
- Examine the training materials used (e.g. video, handbooks, flipcharts, interactive, etc.).
- Verify when and how often training is held.
- Examine written verification of training, if available.
- Verify if heat-related stress was discussed in the training.
- Verify if the appropriate use of PPE was demonstrated to handlers.

2. Central Posting¹¹

The applicable regulations are:

¹¹ Exclude for commercial applicator employers.

Specific Information about Applications (40 CFR § 170.122)—an agricultural employer shall display required information about a pesticide when workers are on the establishment.

Worker Posted Pesticide Safety Information (40 CFR §170.135)—When workers are on-site at an agricultural establishment, the agricultural employer shall display, in accordance with this section, pesticide safety information.

Handler Posted Pesticide Safety Information (40 CFR §170.235)—When handlers (except those employed by a commercial pesticides handling establishment) are on an agricultural establishment . . . , the handler employer shall display, in accordance with this section, pesticide safety information.

Displayed Emergency Medical Care Information (40 CFR §170.135(c))—The agricultural employer must display the name, address, and telephone number of the nearest medical care facility.

An inspector must:

- Verify that required information located at the central location: (1) can be readily seen and read by workers and handlers (e.g., office, outdoors, break room); (2) is where workers and handlers are likely to congregate or pass; (3) workers and handlers are informed of the location; and (4) the location is open and accessible during normal business hours.
- Verify that the locations and descriptions of treated areas allow employees to distinguish treated areas from others at the establishment.
- Verify that the safety poster and its content, emergency care information and pesticide application records are current, complete, legible and posted accessibly.
- Verify that the nearest emergency medical facility's address and telephone number are displayed. It is not acceptable to only post 911.

3. Notice of Application¹²

The applicable regulation is:

Notification to Workers of Pesticide Application in Greenhouses, on Farms, in Nurseries, or in Forests (40 CFR §170.120)—an agricultural employer shall notify workers of any pesticide application in accordance to this section.

An inspector must:

- Verify how workers and handlers are notified of pesticide applications and if the notification is in accordance to those specific labeling requirements—oral or posted signs, or both.
- Identify who notifies workers and handlers of applications.
- Verify if the posting is in accordance with the WPS requirements.

¹² Exclude for commercial applicator employers.

- Verify that the warning sign placement is within required time (pre-application) and post REI removal.
- Determine how warnings are communicated to non-English speaking workers.

4. Entry Restrictions¹³

The applicable regulations are:

Restrictions Associated with Pesticide Applications on Farms, Forests, Nurseries and Greenhouses (40 CFR §170.110)—An agricultural employer shall not allow or direct any person other than an appropriately trained and equipped handler, from entering or remaining in the treated area during a pesticide application until the time specified by label and regulations has elapsed.

General Entry Restrictions (40 CFR §170.112)—An agricultural employer shall not allow any worker to enter or remain in the treated area before the REI specified on the labeling has expired, except as provided in the regulation.

Restrictions During Applications (40 CFR §170.210)—A handler employer and employees shall assure that no pesticide is applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handlers.

An inspector must:

- Verify:
 - if access is restricted during applications and REIs;
 - if any early-entry activities have occurred; and
 - how workers are informed about product labeling restrictions under early-entry activities.
- Verify if required PPE was available and used by early-entry workers.

5. Personal Protective Equipment (PPE)¹⁴

The applicable regulations are:

General Entry Restrictions (40 CFR §170.112(a)(4))—An agricultural employer shall assure that any worker entering the treated area, under the REI as specified by this section, uses the PPE specified in the product labeling for early-entry.

PPE Requirements (40 CFR §170.240)—Any person performing tasks as a pesticide handler shall use clothing and PPE specified on the labeling of the product.

An inspector must:

¹³ Exclude for commercial applicator employers.

¹⁴ Exclude for Farm Labor Contractor (FLC) employers.

- Examine the type of the early-entry PPE a handler or worker used to determine if it is appropriate according to label requirements.
- Determine if the PPE is accessible to employees.
- Identify:
 - who provides proper PPE use instructions and ensures it is used as intended;
 - who is responsible for PPE maintenance and care;
 - frequency that the PPE cleaned;
 - frequency respirator filter is replaced; and
 - where the PPE stored and changed.
- Verify that employees are warned not to take PPE home.

6. Mixing/Loading, Application Equipment and Applications¹⁵

The applicable regulation is:

Restrictions During Applications (40 CFR §170.210)

(a) Contact with workers and other—a handler employer shall assure that no pesticide is applied so as to contact directly or through drift, any worker or other person.

(b) Handlers handling highly toxic pesticides—any handler, performing handling activities with pesticides labeled with the skull and crossbones symbol, is monitored visually or by voice communication at least every 2 hours.

(c) Fumigant applications in greenhouses—a handler employer shall assure that any handler who handles a fumigant in a greenhouse, including any handler entering the greenhouse, before the acceptable inhalation exposure level or ventilation criteria has been met, to monitor air levels or initiate ventilation maintains continuous visual or voice contact with another handler and has immediate access to PPE as required by label.

An inspector must:

- Identify who instructs the handlers in use or equipment and applications.
- Verify if the handlers are provided labeling or access to labeling.
- Verify that the equipment is working and is safe, maintained and repaired.
- Verify that the handlers are monitored during greenhouse fumigations and that the other handler has immediate access to labeled PPE for rescue.
- Verify that the handlers are monitored during handling of skull and crossbones labeled products.
- Determine that any other person is not allowed in the area(s) treated during the application.

¹⁵ Exclude for FLC employers.

7. Decontamination

The applicable regulations are:

Worker Decontamination (40 CFR §170.150)—An agricultural employer must provide decontamination supplies for workers.

Handler Decontamination (40 CFR §170.250)—A handler employer shall provide decontamination supplies during any handling activity for removing pesticides and pesticide residues.

An inspector must:

- Verify if the employer provided decontamination supplies to employees for washing off pesticide residues for any activity.
- Verify if decontamination supplies are accessible to workers and handlers and are not in an area being treated with pesticides or are not located in an area under a restricted-entry interval.
- Verify that the location of decontamination supplies is within ¼ mile for workers or handlers, at the mixing site for mixing activities, and at the aircraft's loading site or in the plane for pilots.
- Verify the supplies include soap, water, single use towels, change of clothing and eye wash, etc. for handlers.
- Verify that an eye flush dispenser is available with at least one pint of water for handlers and early-entry workers for activities permitted by 40 CFR §170.112 and for which the pesticide labeling requires protective eyewear.

8. Emergency Assistance and Pesticide Exposure Incidents

The applicable regulations are:

Worker Emergency Assistance (40 CFR §170.160)— An agricultural employer shall make available emergency medical assistance to any person who is or has been employed on the agricultural establishment to perform tasks related to the production of agricultural plants, and has been poisoned or injured by exposure to pesticides used on the establishment.

Handler Emergency Assistance (40 CFR §170.260)—A handler employer shall make available emergency medical assistance to any person who, is or has been employed by an agricultural establishment or commercial pesticide handling establishment to perform pesticide handling tasks, and has been poisoned or injured by exposure to pesticides used on the establishment.

An inspector must:

- Verify the procedures for reporting pesticide-related illnesses.
- Identify who provides pesticide information to medical personnel and victim.
- Ascertain who provides transportation to an emergency medical facility.
- Determine if there have been any exposure incidents, including drift. If yes, discuss the details of incidents and examine records of incidents, if available.

9. Information Exchange—Commercial Applicators and Growers

The applicable regulations are:

Handler Employers Receipt of Notice of Applications (40 CFR §170.124)—An agricultural employer shall provide to any commercial handler employer, or assure awareness of, specific information about all applications within which the handler may be within ¼ mile.

Agricultural Employers Receipt of Notice of Applications (40 CFR §170.224)—A handler employer shall provide to any agricultural employer, or assure awareness of, specific information about the application of any pesticide on or in an agricultural establishment before any application.

An inspector must:

- Verify if pesticide application information is exchanged between the agricultural establishment employer and handler employer.
- Determine how information is exchanged, when and between whom.
- Verify if and how label and application information is exchanged between the agricultural establishment employer and the FLC employer.

10. Employee Refusals

Although the WPS identifies the agricultural employer as responsible for ensuring the use of PPE during pesticide use, that workers do not enter a treated area before the expiration of the label-required REI and that pesticide safety training is provided, workers may refuse to comply with these requirements. State inspectors are encouraged to identify these situations and record the details of such incidents. This may include, but is not limited to:

- Identifying problems with handlers refusing to comply with the WPS, such as not wearing PPE, taking PPE home, not following label directions, improperly using application equipment, or entering posting fields.
- Identifying problems with workers refusing to comply with the WPS, such as entering treated fields or violating other restrictions.

C. Handler Interviews

The following inspection categories and elements are provided to assist inspectors in interviewing handlers on an agricultural establishment, as part of a WPS Tier I or Tier II compliance monitoring inspection. At each WPS routine use inspection, inspectors are expected to interview handlers present at the time of inspection or describe the efforts made and provide justification in the case file for the absence of interviews. Language barriers and communication barriers based on disability must be overcome to conduct handler interviews at all for-cause inspections when the handler is the complainant or critical witness. Interviews should be conducted privately and without the presence of employer or supervisor. If handler interviews are not possible during normal business hours or at their place of work, interviews may be conducted at another convenient location, such as the labor camp or

private residence, and at a time other than during the inspection. Telephone interviews can serve as a useful information-gathering tool when in-person interviews are not feasible. An additional interview method includes using video conferencing services if available. If no handlers are interviewed, the final inspection report should provide an explanation why the interview did not occur, such as that the handler would not consent or feared retaliation. See Section III.E. to address language and communication barriers during interviews. As stated previously, language barriers presented by workers and handlers with LEP and other communication barriers related to disabilities are not acceptable reasons for not conducting interviews of an employee complainant or critical witness.

1. Pesticide Safety Training

The applicable regulation is:

Pesticide Safety Training for Handlers (40 CFR §170.230)—Before any handler employee performs any handling task, the handler employer shall assure each handler has been trained.

An inspector must:

- Verify when handlers are trained (i.e., before any handling tasks).
- Identify who trains the handlers and what materials are used (e.g. video, handbook or interactive).
- Verify appropriate use of PPE.
- Verify if heat stress training and monitoring is covered.
- Verify that the training is current—ask to see a valid applicator certification, EPA WPS Handler Training Verification Card or other record of proof.

2. Central Posting

The applicable regulation is:

Specific Information about Applications (40 CFR §170.222)—The agricultural employer shall display specific information about pesticide applications when handlers are present on the establishment for the period after any REI has expired plus 30 days.

An inspector must:

- Verify that handlers know where information is centrally posted.
- Verify if application records posted at the central location are updated regularly.
- Identify who regularly updates this application information.

3. Pesticide Applications

The applicable regulations are:

Restrictions During Applications (40 CFR § 170.210)—A handler employer shall assure that any handler performing handling activities with pesticides labeled with skull and crossbones symbol is monitored as specified under this section.

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- A handler employer shall assure that any handler who handles a fumigant in a greenhouse, (including any handler entering the greenhouse before the acceptable inhalation exposure level or ventilation criteria have been met to monitor air levels or initiate ventilation) maintains continuous visual or voice contact with another handler and has immediate access to PPE as required by label.

Knowledge of Labeling and Site-specific Information (40 CFR §170.232)—A handler employer shall assure that before the handler performs any handling activity the handler has read the product labeling or has been informed in an understandable manner of all labeling requirements.

Safety Operation of Equipment (40 CFR §170.234(a))—A handler employer shall assure that before any handler uses any equipment, the handler is instructed in its safe operation; the equipment is inspected, repaired or replaced and pesticide residues has been removed from equipment prior to maintenance, or the person performing maintenance has been notified of pesticide contamination.

An inspector must:

- Verify that the label is accessible or label information has been provided in an understandable manner.
- Verify that handlers are trained in equipment use.
- Identify who cleans and maintains equipment.
- Verify if access is restricted during applications and REIs.
- Verify that handlers are monitored during greenhouse fumigations and how (e.g., constant voice or visual contact).
- Verify that handlers are monitored during handling of skull and crossbones labeled products and how (e.g., voice or visual contact every 2 hrs).
- Verify that handlers who monitor greenhouse fumigators have immediate access to PPE.
- Identify if handlers use a closed system, enclosed cab, open or closed cockpit and any reduced PPE substituted for these systems.

4. Personal Protective Equipment (PPE)

The applicable regulation is:

PPE Requirements (40 CFR §170.240)—Any person performing tasks as a pesticide handler shall use clothing and PPE specified on the labeling for use of the product.

An inspector must:

- Verify PPE is provided and it is appropriate according to the label.
- List PPE the handlers use for the labels examined.
- Identify who cleans and maintains the PPE.
- Identify where handlers change and store PPE or personal clothing.
- Identify whether handlers know not to wear/take home PPE.

5. Decontamination Supplies

The applicable regulation is:

Decontamination (40 CFR §170.250)—A handler employer shall provide decontamination supplies during any handling activity for removing pesticides and pesticide residues.

An inspector must:

- Verify that decontamination supplies are provided and what are the contents (i.e., soap, water, towels, change of clothing and eye wash).
- Verify if supplies are located within ¼ mile from each handler during handling activity.

6. Emergency Assistance

The applicable regulation is:

Emergency Assistance (40 CFR §170.260)—A handler employer shall make available emergency medical assistance to any person employed by an agricultural establishment or commercial pesticide handling establishment to perform pesticide handling tasks, and who has been poisoned or injured by exposure to pesticides as a result of employment.

An inspector must:

- Establish that the agricultural establishment has procedures in place in case of a pesticide exposure incident.
- Identify who provides transportation to emergency medical facility; who provides information to medical personnel/victim.

7. Retaliation

The applicable regulation is:

Prohibited Actions (40 CFR § 170.7(b))—The agricultural or handler employer shall not take any retaliatory action for attempts to comply with WPS or take any action having the effect of preventing or discouraging any worker or handler from complying or attempting to comply with any requirement of this part.

An inspector must:

- Verify that handlers are allowed to comply without employer hindrance. If not:
 - Determine if there have been any incidents of retaliation related to compliance with the WPS and if yes, discuss and record the details of the incidents.

8. Pesticide Exposure Incidents

An inspector must:

- Determine if the agricultural establishment has procedures in place for reporting pesticide-related illnesses.
- Determine if there have been any exposure incidents, including drift; if yes, record the details of incidents.

D. Worker Interviews

The following inspection elements are provided to assist inspectors in interviewing workers on an agricultural establishment, as part of a WPS Tier I or Tier II compliance monitoring inspection. Inspectors are expected and should make every effort to interview workers present at the time of inspection. Interviews should be conducted in private without the presence of the employer or supervisor at a location and time convenient for the worker, such as the labor camp, private residence or other agreed-upon location. Telephone interviews can serve as a useful information-gathering tool when in-person interviews are not feasible. Additional interview methods could include using video conferencing services if available. If no workers are interviewed, the final inspection report should provide an explanation describing why the interview did not occur. Possible reasons include, but are not limited to, the worker would not consent or feared retaliation. See Section III.E for a discussion of how to address language and communication barriers during interviews.

1. Pesticide Safety Training

The applicable regulation is:

Pesticide Safety Training for Workers (40 CFR §170.130)—an agricultural employer shall assure that each worker who is required to be trained has been trained according to this section.

An inspector must:

- Verify if workers have been provided basic or full WPS safety training, or both.
- Identify who conducted the training and what materials were used (e.g., video, handbook, flipchart, interactive materials or instruction).
- Verify that the training is current. Ask workers to see an EPA WPS Worker Training Verification Card or other record of proof if available.

2. Central Posting

The applicable regulations are:

Specific Information About Applications (40 CFR §170.122)— An agricultural employer shall display required information about a pesticide when workers are on the establishment within 30 days of a pesticide subject to WPS being applied on the establishment or after an REI has been in effect.

Posted Pesticide Safety Information for Workers (40 CFR §170.135)— An agricultural employer shall display pesticide safety information when workers are on the agricultural establishment and, within the last 30 days, a pesticide subject to WPS has been applied or an REI has been in effect.

Display of Emergency Medical Care Information (40 CFR §170.135(c))—The agricultural employer must display the name, address and telephone number of the nearest medical care facility.

An inspector must:

- Verify if workers know where the central posting information is located.
- Determine if workers know what information is included in the central posting.

3. Notification of Treated Areas

The applicable regulation is:

Notification to Workers of Pesticide Applications in Greenhouses, on Farms, in Nurseries or in Forests (40 CFR §170.120) — The agricultural employer shall notify workers of any pesticide application by posting warning signs or orally or both depending on the statement on the product labeling.

An inspector must:

- Determine how workers are notified about treated areas—oral or posted signs, or both.
- Verify if workers understand what the posted sign means.
- Identify who is responsible for notifying the workers.
- Identify who posts signs and when.
- Determine if signs are removed when they are no longer applicable.
- Verify how warnings are communicated to non-English speaking workers.

4. Decontamination Supplies

The applicable regulation is:

Decontamination (40 CFR §170.150) — An agricultural employer must provide decontamination supplies for workers in accordance with this section.

An inspector must:

- Verify that supplies are accessible to workers and identify the contents provided (i.e. soap, water, towels, and eye flush (if required)).
- Verify if supplies are located no more than ¼ mile from work site.

5. Early Entry

The applicable regulations are:

Restrictions Associated with Pesticide Applications on Farms, Forests, Nurseries and Greenhouses (40 CFR §170.110)—An agricultural employer shall not allow or direct any person, other than those appropriately trained and equipped, to enter or remain in the treated area during a pesticide application until the time specified by label and regulations has expired.

General Entry Restrictions (40 CFR §170.112)—An agricultural employer shall not allow any worker to enter or remain in the treated area before the REI specified on the labeling has expired except as provided in this section.

An inspector must:

- Note if there are any early-entry activities.
- Verify if workers are fully trained.
- Verify if workers have been informed of label safety requirements.
- Verify if early-entry PPE is provided and workers are instructed in its use.
- Verify that appropriate use of PPE and heat stress training is covered for early-entry.

6. Handler Tasks

An inspector must:

- Inquire if workers are asked to do handler tasks.
- Verify that handler training and PPE is provided if handler tasks are performed.

7. Emergency Assistance

The applicable regulation is:

Emergency assistance (40 CFR §170.160)—An agricultural employer shall make available emergency medical assistance to any person who is or has been employed on the agricultural establishment to perform tasks related to the production of agricultural plants, and who has been poisoned or injured by exposure to pesticides used on the establishment.

An inspector must:

- Inquire as to the agricultural establishment's policy in case of a pesticide exposure incident.
- Determine who is contacted in an emergency.
- Determine who provides transportation to an emergency medical facility.

8. Retaliation

The applicable regulation is:

Prohibited Actions (40 CFR §170.7(b))—An agricultural or handler employer shall not take any retaliatory action against any worker or handler for attempts to comply with WPS or take any action having the effect of preventing or discouraging any worker or handler from complying or attempting to comply with any requirement of 40 CFR part 170.

An inspector must:

- Verify that workers are allowed to comply without employer hindrance. If not:

- Determine if there have been any incidents of retaliation related to compliance with WPS and if yes, discuss and record the details of incidents.

9. Pesticide Exposure Incidents

An inspector must:

- Inquire about the procedure for reporting pesticide-related illnesses.
- Determine if there have there been any exposure incidents, including drift. If yes, record the details of incidents.

VI. REPORTING WPS AGRICULTURAL INSPECTIONS

States should report all agricultural inspection activities including WPS inspections and their related enforcement actions on the general EPA Form 5700-33H. In addition, states should report WPS inspections and related enforcement actions on the specific WPS EPA Form 5700-33H. EPA strongly encourages that states report all WPS inspections on both forms, regardless whether the inspection is funded with state or federal monies.

WPS inspection accomplishments may be reported on the WPS 5700-33H Form only when the following conditions are met:

- (1) Pesticides with WPS labeling have been used at the establishment;
- (2) All the applicable WPS agricultural inspection categories/elements as described in Section V have been covered in the inspection, and;
- (3) As part of the inspection the inspector has interviewed (or attempted to interview) one or more available employed workers and handlers present at the facility.

Inspections that fall short of any of the above criteria cannot be counted as a WPS inspection on the WPS EPA Form 5700-33H, but may be reported as a general agricultural-use inspection on the general EPA Form 5700-33H.

EPA is committed to developing and maintaining a WPS enforcement program with national consistency for annual inspection reporting, while recognizing the value of flexibility and the factor of state workloads in the timing of these inspections. Therefore, EPA is retaining the two types of WPS agricultural inspections - WPS Tier I and Tier II Compliance Monitoring Inspections -- for reporting on the WPS EPA Form 5700-33H. If any inspection does not meet the criteria as a WPS inspection, either Tier I or II, it may be reported as an agricultural-use or for-cause inspection on the EPA Form 5700-33H.

States are encouraged to submit information on the specific categories of WPS violations. This data is to be provided on the EPA WPS Form 5700-33H. EPA acknowledges that many states already capture WPS violations at inspected establishments. Providing these details to EPA will better highlight areas where

compliance difficulties remain, where compliance assistance activities and enforcement targeting should be focused and to monitor national trends (or serve as environmental indicators) year-to-year. States should use the data about specific WPS violative areas in planning compliance assistance efforts and enforcement targeting.

The ONLY difference between WPS Tier I and II compliance monitoring inspections is whether the WPS inspection is performed within 30 days after an REI has expired (Tier I) or more than 30 days after the expiration of the REI (Tier II).

A. Reporting WPS Tier I Inspections

WPS Tier I compliance monitoring inspections include any agriculture-use inspections that:

- (a) Are conducted during the time frame which starts when pesticides are applied and ends 30 days after expiration of the REI;
- (b) Cover all applicable WPS inspection categories/elements, including interviews with handlers and/or workers present at the facility. During this period, as described in 40 CFR §170.9, all provisions of the WPS can be appropriately verified and if violations are observed, the WPS is fully enforceable based on the observation and information collected by the inspector.
- (c) Provide a written explanation for inspection categories/elements not addressed during the inspection.

EPA expects state inspectors to cover, to the fullest extent possible, all the applicable categories and elements described in this Guidance. Furthermore, EPA will not consider an agricultural inspection as a WPS Tier I inspection unless the inspector successfully interviewed workers and handlers or provided adequate written explanation for why no workers or handlers, or both, were interviewed.

B. Reporting WPS Tier II Inspections

WPS Tier II compliance monitoring inspections include any agriculture-use inspection that:

- (a) Is conducted beyond 30 days after expiration of the REI.
- (b) Covers all applicable WPS inspection categories and elements, including worker or handler interviews.
- (c) Provides adequate written explanation for why no workers or handlers were interviewed.

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

C. Reporting Other Types of WPS Agricultural Inspections

1. Commercial Applicator Establishment Inspections

Inspections at a commercial applicator establishment may only count as acceptable WPS inspections: (1) when the inspector covers all applicable WPS categories and elements in this Guidance; (2) an attempt is made to interview at least one handler; and (3) this inspection is treated as a distinct case file by the state. These inspections are counted either as Tier I or Tier II in the same way as agricultural-use establishment inspections.

Separate inspections at both a commercial applicator establishment and its associated agricultural establishment (customer/client) may count as two WPS inspections if:

- (1) Each inspection is treated as a distinct and separate case file;
- (2) Each inspection covers all applicable WPS categories and elements within this Guidance; and
- (3) The inspector conducts interviews of workers/handlers at each establishment or provides justification for the absence of interviews in the final inspection report.

Each inspection will be separately counted as either Tier I or Tier II.

If the commercial applicator establishment also commercially produces or maintains agricultural plants, then that single site inspection may count as two WPS inspections only if:

- (1) The same employer inspection is treated as two separate and distinct inspections by the state, one for their own agricultural production and one for their relationship with other agricultural establishments as a commercial applicator;
- (2) All applicable WPS categories and elements within this Guidance are covered; and
- (3) Interviews of at least one worker and handler for the agricultural production component of the business, and at least one handler for the commercial applicator component of the business have been conducted or justification provided in final inspection report for the absence of interviews.

Each of these components for the employer is to be counted as either Tier I or Tier II depending on the inspection date and last application date for each the agricultural production and commercial applicator portion of the business.

2. Immediate Family Exemption

Inspections conducted at farms using the immediate family exemption, with no non-family employees, may count as an acceptable WPS inspection as long as all applicable WPS categories and elements in this Guidance are covered. Similar to non-family agricultural inspections, inspections at family-exempted farms may be counted either as Tier I or Tier II. Inspections at facilities using the immediate family exemption should be considered as a low priority in a state's routine targeting scheme.

3. Farm Labor Contractors (FLC)

Field inspections of workers hired by an FLC without an associated inspection of the agricultural establishment or employer who hires the FLC may count as a WPS inspection if all applicable categories and elements in this Guidance are covered and the state has regulatory authority to perform these inspections and take enforcement action. However, whenever possible, EPA encourages states to perform co-inspections of both the workers of an FLC and the affiliated agricultural establishment or employer in order to obtain a clear and complete assessment of WPS compliance. An inspection of an FLC office only without interviewing the employees cannot count as a WPS inspection nor as a regular agricultural use inspection. FLC inspections are counted either as Tier I or Tier II. An inspection of both the agricultural establishment and its associated workers hired by an FLC may be considered as two WPS inspections if: (1) the state has the authority to conduct FLC-only inspections; (2) the two different employer inspections are treated by the state as distinct and different case files; (3) all applicable WPS elements within this Guidance are covered; and (4) interviews of employees have been conducted or justification provided in the final inspection report. Otherwise, an inspection of the agricultural employer and its associated FLC only may count as one WPS inspection.

D. Reporting WPS For-Cause Inspections

Complaint-based for-cause WPS inspections and those alleging human health exposures should be thoroughly and completely documented. These for-cause compliance monitoring inspections should use this Guidance, verifying all provisions of the WPS as applicable. These for-cause inspections are to be counted as either Tier I or Tier II on the WPS EPA Form 5700-33H.

E. WPS Re-Inspections

Re-inspections of an establishment or employer who previously was in violation of the WPS must be complete, covering all applicable WPS categories and elements in this Guidance, as well as employee interviews (or written justification why the interviews were not performed) in order to be reportable as a complete federal WPS inspection. These re-inspections should be counted as “for-cause” inspections and may be counted as Tier I or Tier II. Re-inspections which consist only of an examination of the categories and elements in which the employer previously was in violation, without covering all applicable other elements or interviewing employees, cannot be reported as a federal WPS inspection because these inspections are incomplete. However, these incomplete WPS re-inspections may be counted as an agricultural-use inspection for EPA. Receipt by the state of a letter from the employer indicating corrected violations does not count as a re-inspection, either as WPS or as regular agricultural use. EPA considers this employer letter as closure of the initial inspection that discovered these violations.

F. Linkage to EPA Cooperative Agreement Guidance and State Work Plans

WPS compliance monitoring and enforcement remains a priority with EPA. Through the implementation of this Guidance, EPA expects to achieve national consistency of WPS inspections. EPA expects all states to perform thorough WPS inspections, appropriately document observed violations, prepare a complete

inspection case file and take appropriate enforcement actions in accordance with state enforcement response and penalty policies. Compliance assistance in lieu of enforcement is not acceptable as a response to violations documented during WPS inspections.

EPA expects that each state will negotiate annually with EPA regional offices for a projected numbers of WPS inspections, based in part on the federal and state funds available. The number of projected WPS Tier I inspections should outnumber the number projected for Tier II. Each state should develop their own inspection targeting scheme based in part on recommendations provided in the EPA's FIFRA State and Tribal Assistance Cooperative Agreement Guidance,¹⁶ a state's own Enforcement Response Policy or a state's enforcement standard operating procedures. This written WPS targeting scheme should be included within the annual work plan. States should work closely with their EPA regional office on these annual WPS enforcement commitments and to address state-specific issues or problems which may impede compliance monitoring and enforcement.

VII. EPA SUPPLEMENTAL WPS ENFORCEMENT TOOLS

The following EPA resources may be helpful for a state to carry-out WPS inspections or support State case development:

- WPS Rule at: <http://www.epa.gov/pesticides/safety/workers/PART170.htm>
- WPS General Compliance Assistance at: <http://epa.gov/agriculture/twor.html>
- WPS How-to-Comply Manual at: <http://epa.gov/agriculture/htc.html>
- WPS Interpretive Guidance Workgroup Questions and Answers at: <http://www.epa.gov/pesticides/safety/workers/wpsinterpolicy.htm>
- WPS Compliance Monitoring Program at: <http://www.epa.gov/compliance/monitoring/programs/fifra/wps.html>
- Title VI of Civil Rights Act of 1964 at: <http://www.epa.gov/civilrights/t6facts.htm>
- EPA WPS Publications Center at: <http://epa.gov/agriculture/awor.html>
- Title VI LEP Guidance for EPA Financial Assistance Recipients at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf
- Limited English Proficiency federal home page at: <http://www.lep.gov/>

¹⁶ The FY2011 to FY2013 Guidance is available at: <http://www.epa.gov/compliance/resources/policies/state/grants/fifra/11-13guidance.pdf>

VIII. CLARIFYING QUESTIONS AND ANSWERS

1. **When does an agricultural-use inspection NOT count as a WPS inspection?**

An agricultural-use inspection does not count as a WPS inspection if:

- No pesticides with WPS labeling were used on the establishment, or
- The applicable WPS inspection categories and elements for routine WPS agricultural-use inspections were not covered during the inspection, or
- No workers or handlers were interviewed as part of the inspection although employed at the time of the inspection and no written explanation is provided for lack of any interviews.

2. **Does an inspection of a commercial applicator establishment count as a WPS inspection?**

Yes, when the commercial applicator is using a pesticide with WPS label requirements. The inspection must include all applicable WPS inspection elements as discussed for Tier I and Tier II WPS compliance monitoring Inspections. WPS elements that may be excluded are central posting, notice of applications to workers and entry restrictions, unless the same commercial handler establishment also produces or maintains their own agricultural plants and hires workers to care for the plants. Inspectors should focus on how and when information exchanges occurred between commercial applicators and their customers before any application. The inspector does not necessarily have to observe an ongoing application for this to count as a WPS inspection. An attempt must be made to interview at least one handler as part of the inspection. To count an inspection of the commercial applicator's customer or client as a separate WPS inspection, the inspection also must follow the criteria for a WPS inspection and be treated as a separate case by the state.

3. **Does an inspection of a commercial applicator establishment that also produces or maintains its own agricultural plants count as one or two WPS inspections?**

Yes, it may count as two inspections under the appropriate conditions. The following conditions must be met:

- (1) Each inspection is treated as a separate and distinct inspection by the state, one the agricultural production side of the business and another for the commercial applicator;
- (2) All applicable WPS categories and elements within this Guidance are covered; and
- (3) An attempt is made to interview at least one worker for the agricultural production component of the business, and at least one handler for the commercial applicator component of the business.

If these conditions are not satisfied, the inspection counts only as one WPS inspection. The inspection qualifies as a Tier I or Tier II inspection depending on the last application date at the agricultural production and commercial applicator portion of the business in relationship to the date of inspection.

4. Does an inspection at a facility operating under the immediate family exemption fall within this Guidance and count as a minimal WPS inspection?

Yes, a WPS inspection at a facility employing only immediate family members may count as a full WPS inspection on the EPA Form WPS 5700-33H as long as all applicable categories and elements within this Guidance are covered. Inspections at facilities using the immediate family exemption should be considered as a low priority in a state's routine targeting scheme. The regulations (40 CFR §170.104(a)) exempt owners and their immediate family from some provisions. Therefore, inspections at farms utilizing the immediate family exemption need not include categories of this Guidance such as pesticide safety training, central posting, notice of applications, decontamination, emergency assistance, care of PPE, monitoring handlers and some early-entry duties. However, EPA recommends that agricultural owners still try to provide these protections to their family members even if not required to so do. Inspections at facilities compliant with the immediate family exemption need not include interviews of other immediate family members, but EPA recommends additional family member interviews if the state inspector is seeking additional information, corroboration or has reason to believe that the information provided initially is incorrect or suspicious. When conducting for-cause inspections at such facilities, additional family interviews are strongly recommended.

If the facility employs at least one worker or handler who does not meet the definition of immediate family, then the facility does not qualify under the WPS immediate family exemption and must comply with all applicable categories and elements within this Guidance.

5. Does an inspection of only the workers employed by a farm labor contractor (FLC) count as a WPS inspection?

Yes, if workers are observed performing tasks in the fields, all applicable categories and elements within this Guidance are covered, effort is made to interview one or more workers and the state has the regulatory authority to perform these inspections and take enforcement action. These inspections must include visual examination of all applicable compliance categories and elements.

The agricultural establishment owner, operators and employers, including FLCs, are jointly responsible for providing training and other WPS protections to workers and for ensuring compliance with WPS requirements. The agricultural owner, operator and employer, including labor contractors, each may be liable for a given WPS violation.¹⁷ Therefore, EPA encourages that such field inspections of workers hired by an FLC include **both** interviews of workers and agricultural employers. Inspectors should

¹⁷ See WPS IGW Policy Q & A at 16.12 at <http://www.epa.gov/pesticides/safety/workers/wpsinterpolicy.htm>

determine which party is responsible for compliance with each applicable category and element of the WPS. Inspectors must assign detected violations to the responsible employer.

If both the workers of an FLC **and** the hiring agricultural establishment are inspected, then these inspections can count as two complete WPS inspections if the state has legal authority to conduct FLC-only inspections, the inspections are treated as two distinct case files and all the applicable elements are covered. Either inspection is counted as Tier I or Tier II. Office-only visits of an FLC cannot count as a complete WPS inspection or as a regular agricultural use inspection on the EPA WPS 5700-33H Form.

6. Inspectors currently use a WPS checklist during an agricultural inspection to supplement and support the narrative report. Is this still acceptable?

Yes. The checklist may be included in the final inspection report and with the narrative as an attachment. With the release of this revised Guidance, EPA expects states to re-examine their existing WPS inspection form and checklist to ensure compliance with this Guidance.

7. If an inspector only completes a WPS checklist, does the inspection count as a WPS inspection?

Yes. An inspection counts as a WPS inspection if the WPS checklist: (1) covers all applicable WPS inspection categories and elements; (2) includes an additional short narrative that further details the nature of any detectable violations; and (3) indicates if one or more workers or handlers are interviewed as part of the inspection.

Determining compliance with the WPS is accomplished by implementing a series of investigative efforts, such as questions, observations, interviews, and review of pesticide labels. Narrative details of violations detected along with evidence, including labels or label information, training records, application records, photos, statements from interviewees and lab analyses, are necessary for a case file to be considered a complete WPS inspection.

8. While conducting a WPS inspection at a facility, only one worker is interviewed even though handlers are also present. Does this satisfy the requirement to interview employees?

No. EPA does not consider an agricultural inspection countable as a WPS inspection unless the inspector has interviewed at least one worker **and** one handler, if applicable, as part of a WPS inspection or has provided written explanation why no workers or handlers were interviewed. EPA prefers that two or more workers and handlers actually are interviewed, depending on available time and circumstances of the inspection.

9. During a routine use inspection, an inspector is unable to interview workers and handlers due to difficulty in communicating with these persons because they are limited English proficient. Does this count as a WPS inspection?

Yes. If all appropriate categories and elements of Tier I or Tier II inspections are met, and the inspection report includes an explanation of how the inspector made a good faith effort to conduct the interviews, but was unable to communicate because of language barriers, then that inspection does count as a federal WPS inspection. However, language barriers are not acceptable as a reason for not conducting an employee-complainant or critical witness interview during for-cause inspections; or during routine inspections if they observe a violation or a worker or handler attempts to provide information regarding a possible violation. Only when an inspector has made a good faith effort to conduct interviews, documents their effort and meets all other requirements can an inspection count as a WPS inspection.

States are strongly encouraged to develop and create ways to overcome language barriers, including hiring bilingual inspectors, identifying interpreter and translator resources and ascertaining farm labor groups with volunteer interpreters and translators. Inspectors also may attempt to meet with workers at another place and time when an interpreter is available. Telephone interviews are recommended when a complainant or critical witness is unavailable for an in-person interview but is still willing to discuss the complaint with an inspector on the telephone. Telephone interviews can serve as a useful information gathering tool to obtain preliminary information to initiate an investigation and to gather additional information during an ongoing investigation. Further, various video technologies offer yet another alternative for communicating with workers and handlers. EPA regions will monitor states' efforts to overcome this inspection impediment.

10. During a for-cause inspection, an inspector examines all applicable WPS categories and elements, but is unable to interview workers and handlers due to difficulty in communicating with these persons because they are limited English proficient. These workers and handlers are determined to be the complainants or critical witnesses. Does this count as a WPS inspection?

No. EPA does not consider an agricultural for-cause inspection a WPS inspection unless the inspector has obtained sufficient information about the alleged misuse or label violation through interviews directly with the complainants and critical witnesses as determined by the state inspector on-site, and in accordance with the state's SOP, in addition to examining all applicable categories and elements. Language or disability-related communication barriers are not acceptable as the sole reason for not conducting an interview during for-cause inspections. In for-cause inspections, employee interviews of the complainant and other critical witnesses are essential. Therefore, EPA expects a greater level of effort to overcome any barrier to the interviews. For-cause inspections at establishments that cover all applicable categories and elements, but fail to interview the complainant and critical witness may not be counted as WPS, but may be counted as an agricultural for-cause inspection.

11. What approach should be taken in responding to an alleged employee pesticide exposure or suspected WPS noncompliance via tip or complaint?

A WPS inspection should be performed that addresses all applicable WPS categories and elements described in this Guidance. The state should follow established SOPs for agricultural worker for-cause complaints, carefully and thoroughly documenting detected WPS violations. These procedures also should include interviewing the employee who filed the tip or complaint, as well as any other appropriate person. During these inspections, language or disability-related communication barriers are not an acceptable excuse for not conducting interviews with the complainant or critical witnesses.

12. If an inspector interviews workers a month or later following a site-specific compliance inspection for WPS, can that work be counted as two WPS inspections?

No. EPA does not consider this inspection scenario at the same agricultural establishment as two separate inspections. The inspector, in this scenario, simply is making reasonable efforts to complete required parts of a specific inspection, albeit a month or more apart. The inspection would be credited as the completion of one WPS agricultural-use inspection.

13. Can a routine WPS inspection be undertaken if the last pesticide application was more than 30 day ago on an establishment using a WPS labeled pesticide product?

Yes, if all applicable WPS inspection categories and elements are covered to the best of the inspector's capability and the inspection includes worker and handler interviews. The state inspector must document all detected violations and, when possible, obtain a written statement of non-compliance from the employer. The state may subsequently take appropriate enforcement action depending only on its authority. This inspection can be only reported to EPA as a WPS Tier II compliance monitoring inspection, regardless of the fact that the violation, as relayed to the inspector, actually occurred within 30 days of application.

14. An inspector revisits an establishment or employer that previously was inspected for WPS compliance and found to have one or more violations. Can the state count this re-inspection as a WPS inspection on the EPA WPS Form 5700-33H if the inspector examines only those categories and elements found previously to be absent or in violation and overlooks other elements previously covered?

No. Re-inspections that only consist of the examination of select WPS categories and elements that were previously found to be in violation do not count as a complete WPS inspection because the inspector did not re-examine all applicable elements. In order to count as a separate WPS inspection, all re-inspections must be thorough, examining all applicable WPS categories and elements described in this Guidance. These re-inspections can be counted as Tier I if conducted up to 30 days after an REI has

expired or as Tier II if conducted more than 30 days after the expiration of the REI. EPA considers re-inspections to be an important component of a state's compliance monitoring program to verify that a previous violator corrected the necessary deficiencies and now is fully in compliance with the WPS. EPA recommends that all states re-inspect a proportion of previous WPS violators. However, a re-inspection that only partially covers the WPS categories and elements may be counted as a regular agricultural use inspection.

15. What are a state's obligations to provide meaningful access to its programs and services to limited English proficient (LEP) individuals and to accommodate persons with disabilities during inspections?

A state must provide meaningful access to LEP individuals and to individuals with disabilities. Title VI of the Civil Rights Act of 1964 prohibits discrimination based on national origin. Its provisions have been interpreted as obligating a state's to provide meaningful access to LEP individuals. A state's obligation to accommodate individuals with disabilities stems from § 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability.

If there is a language barrier, an inspector must overcome that barrier to conduct interviews (1) of employee-complainants or critical witnesses during for-cause inspections or (2) in the course of routine inspections where the inspector observes a violation or a worker or handler attempts to provide information about a possible violation. A critical witness is a witness who is considered essential to completing an inspection. States should use their discretion to decide which witnesses are essential for completing an inspection, without regard to their language ability. In each case, the decision about whom to interview depends on the particular facts of the inspection. For example, if an inspector identified a witness who is essential to the completion of a for-cause investigation or an inspection in which the inspector observes a violation and/or a worker/handler attempts to provide information about a possible violation and discovers that the witness has limited English proficiency, the inspector must overcome the language barrier. The Guidance includes numerous suggestions to overcome a language barrier include using an on-site interpreter, hiring bilingual inspectors, using translator resources and translation services for written documents, conducting telephone interviews with interpreters when in-person interviews are not feasible, or using video conferencing with interpreters.

A State's obligation to provide meaningful access to LEP individuals stems from Title VI of the Civil Rights Act of 1964. To determine a state's responsibilities for providing language services during WPS inspections, four factors are used:

1. The number or proportion of LEP individuals eligible to be served or likely to be encountered by its WPS program;
 2. The frequency with which LEP individuals come in contact with its WPS program;
 3. The nature and importance of the particular activity or service provided by its WPS program;
- and

4. The resources available to the state.¹⁸

EPA's WPS Guidance on providing language services to interview employee-complainants and critical witnesses allows states to meet their obligations under Title VI. For further information regarding LEP, please see <http://www.lep.gov/> and state civil rights resources.

If there is communication barrier due to an interviewee's disability, such as a vision, hearing or speech impairment, an inspector must overcome that barrier to conduct interviews of employee-complainants and witnesses. Specifically, the state must make a reasonable accommodation for known physical or mental limitations of an individual with a disability. In rare instances, a state can demonstrate that the accommodation would impose an undue hardship. Proving this exemption according to the courts is a very difficult.

Undue hardship means significant difficulty or expense and focuses on the resources and circumstances of the state agency in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial or disruptive, or those that would fundamentally alter the nature or operation of the business. For further information regarding reasonable accommodations for disabilities, please see <http://www.ada.gov/> and state civil rights resources.

Example 1— Routine WPS Inspection and a Language Barrier of Critical Witness

During a routine WPS inspection the inspector becomes aware at the start of the employee interviews that only one employee, who speaks Hmong, has information of an alleged WPS violation. The state predetermined that Hmong is a major language used by the state's agricultural worker population. Therefore, this critical witness must be interviewed, and the language barrier is not an excuse for not collecting the witness's statement. Alternatively if there are additional employees who share the same first-hand information about a WPS violation and they speak English and they could offer an equivalent statement, then the Hmong-speaking employee is no longer a critical witness and need not be interviewed.

Example 2—For-cause Inspection and Disability Accommodation

An inspector is conducting a for-cause inspection and there are two critical witnesses, one of whom is hearing-impaired. The inspector must interview both witnesses if required by the state's SOP. The inspector should consult with the hearing-impaired witness to determine an appropriate accommodation and then arrange for the interview when such accommodations are available.

¹⁸ See Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 35,602 (June 25, 2004) at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf.

Example 3—For-cause Inspection with Multiple Witnesses

Building on example 2, if there were five witnesses who were knowledgeable about the alleged incident and one was hearing-impaired, the inspector should determine if all five witnesses would normally be interviewed. It may be the case one of the witnesses provides enough facts to complete the inspection without interviewing the remaining witnesses. However, if the disabled witness possesses crucial information that the other witnesses do not, the inspector must overcome the communication barriers. As stated previously, making a determination about which witnesses to interview is case and fact specific, but must be done without regard to a witness's disability. Once an inspector determines which witnesses need to be interviewed, any identified witness with a disability must be accommodated.

Example 4—For-cause Inspection and Employee Complainant Lives Out-of-State or Out-of-United States

A health-based pesticide exposure complaint is filed against an agricultural employer by a Spanish-speaking employee, who lives out of the state or the United States by the time the complaint is received or investigated by the state. The employee contacts the inspector and is willing to provide information about the alleged violation by telephone. The state should conduct the interview by telephone, or video conference if available, and must provide a translator to obtain preliminary information to initiate an investigation or to gather additional information for an ongoing investigation.

16. Does compliance with this Guidance provide immunity from liability under Title VI?

Good faith efforts to comply with this Guidance will go a long way toward ensuring compliance with Title VI. However, because of the fact-specific nature of the four-factors involved in the analysis (The number or proportion of LEP individuals eligible to be served or likely to be encountered by its WPS program; the frequency with which LEP individuals come in contact with its WPS program; the nature and importance of the particular activity or service provided by its WPS program; and the resources available to the state), it is not possible to identify an adequate solution for every entity or scenario within this Guidance. For example, LEP populations vary among the states, as do the nature of the services provided by the various state agencies. Therefore, “meaningful access” is a fact-specific inquiry that conducted by each state program with familiarity with the population served by that program. When a situation involving an LEP witness occurs, a state must assess its responsibility for providing language services in that unique case.

17. In many cases with the tribes, there are more than two farm labor contractors (FLCs) working on one agricultural field. Would that be considered as two WPS inspections if both FLCs' workers are interviewed during the same visit?

Yes. If the inspector interviews workers from both FLC employers and covers all other applicable elements for each FLC, the tribe can count this as two inspections. Each inspection must include observations of workers performing field work where a WPS labeled pesticide application has occurred.

18. Many FLCs are contracted and come from another state onto tribal land, and therefore do not have an office to inspect for central posting. In this case, should the central posting belonging to the grower, farmer or rancher be inspected?

Yes, the central posting for the grower, farmer or rancher should be inspected. Both owners and the FLC are jointly responsible for providing WPS protections to workers (see WPS IGW Q&A 16.12). EPA recommends that field inspections of an FLC include an inspection of the establishment or employer covering all applicable elements and interview of workers hired by the FLC. If the inspector looks only at the central posting for the grower, it would not qualify as a complete WPS inspection.