

inspection, or given access to, all other records and information regarding the same shall be provided.

(2) Where no such inability exists and any such person fails to give access to and permit copying of such records as required, such failure shall be deemed a refusal to keep records required or a refusal to allow the inspection of any such records or both.

## PART 170—WORKER PROTECTION STANDARD

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SOURCE: 57 FR 38151, Aug. 21, 1992, unless otherwise noted.

## Subpart A—General Provisions

### § 170.1 Scope and purpose.

This part contains a standard 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 the accidental exposure of workers and other persons to such pesticides. It requires workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to exposure-related emergencies.

### § 170.3 Definitions.

Terms used in this part have the same meanings they have in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, when used in this part, shall have the following meanings:

*Agricultural employer* means any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of or is responsible for the management or condition of an agricultural establishment that uses such workers.

*Agricultural establishment* means any farm, forest, nursery, or greenhouse.

*Agricultural plant* means any plant grown or maintained for commercial or research purposes and includes, but is not limited to, food, feed, and fiber plants; trees; turfgrass; flowers, shrubs; ornamentals; and seedlings.

*Chemigation* means the application of pesticides through irrigation systems.

*Commercial pesticide handling establishment* means any establishment, other than an agricultural establishment, that:

(1) Employs any person, including a self-employed person, to apply on an agricultural establishment, pesticides used in the production of agricultural plants.

(2) Employs any person, including a self-employed person, to perform on an

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agricultural establishment, tasks as a crop advisor.

*Crop advisor* means any person who is assessing pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants. The term does not include any person who is performing hand labor tasks.

*Early entry* means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

*Farm* means any operation, other than a nursery or forest, engaged in the outdoor production of agricultural plants.

*Forest* means any operation engaged in the outdoor production of any agricultural plant to produce wood fiber or timber products.

*Fumigant* means any pesticide product that is a vapor or gas, or forms a vapor or gas on application, and whose method of pesticidal action is through the gaseous state.

*Greenhouse* means any operation engaged in the production of agricultural plants inside any structure or space that is enclosed with nonporous covering and that is of sufficient size to permit worker entry. This term includes, but is not limited to, polyhouses, mushroom houses, rhubarb houses, and similar structures. It does not include such structures as malls, atriums, conservatories, arboretums, or office buildings where agricultural plants are present primarily for aesthetic or climatic modification.

*Hand labor* means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with surfaces (such as plants, plant parts, or soil) that may contain pesticide residues. These activities include, but are not limited to, harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, roguing, and packing produce into containers in the field. Hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing the tasks of crop advisors.

*Handler* means any person, including a self-employed person:

(1) Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which subpart C of this part applies and who is:

(i) Mixing, loading, transferring, or applying pesticides.

(ii) Disposing of pesticides or pesticide containers.

(iii) Handling opened containers of pesticides.

(iv) Acting as a flagger.

(v) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.

(vi) Assisting with the application of pesticides.

(vii) Entering a greenhouse or other enclosed area after the application and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by this part (§ 170.110(c)(3)) or in the labeling has been met:

(A) To operate ventilation equipment.

(B) To adjust or remove coverings used in fumigation.

(C) To monitor air levels.

(viii) Entering a treated area outdoors after application of any soil fumigant to adjust or remove soil coverings such as tarpaulins.

(ix) Performing tasks as a crop advisor:

(A) During any pesticide application.

(B) Before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by this part (§ 170.110(c)(3)) or in the labeling has been met.

(C) During any restricted-entry interval.

(2) The term does not include any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions or, in the absence of such instructions, have been subjected to triple-rinsing or its equivalent.

*Handler employer* means any person who is self-employed as a handler or who employs any handler, for any type of compensation.

*Immediate family* includes only spouse, children, stepchildren, foster

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children, parents, stepparents, foster parents, brothers, and sisters.

*Nursery* means any operation engaged in the outdoor production of any agricultural plant to produce cut flowers and ferns or plants that will be used in their entirety in another location. Such plants include, but are not limited to, flowering and foliage plants or trees; tree seedlings; live Christmas trees; vegetable, fruit, and ornamental transplants; and turfgrass produced for sod.

*Owner* means any person who has a present possessory interest (fee, leasehold, rental, or other) in an agricultural establishment covered by this part. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this part.

*Restricted-entry interval* means the time after the end of a pesticide application during which entry into the treated area is restricted.

*Treated area* means any area to which a pesticide is being directed or has been directed.

*Worker* means any person, including a self-employed person, who is employed for any type of compensation and who is performing activities relating to the production of agricultural plants on an agricultural establishment to which subpart B of this part applies. While persons employed by a commercial pesticide handling establishment are performing tasks as crop advisors, they are not workers covered by the requirements of subpart B of this part.

### § 170.5 Effective date and compliance dates.

(a) *Effective date.* The effective date for this part, including § 170.112(e), shall be October 20, 1992.

(b) *Accelerated provisions.* The compliance date shall be April 21, 1993, for:

- (1) Section 170.112(a) through (c)(3);
- (2) Section 170.112(d)(1) through (d)(2)(ii);
- (3) The requirement of § 170.112(c)(3) as referenced in § 170.112(d)(2)(iii);
- (4) The requirement of § 170.112(c)(3) as referenced in § 170.112(e)(5);
- (5) Section 170.120(a)(3); and

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(6) Section 170.120(b)(3).

(c) *All other provisions.* The compliance date for all other provisions of this part shall be April 15, 1994.

### § 170.7 General duties and prohibited actions.

(a) *General duties.* The agricultural employer or the handler employer, as appropriate, shall:

(1) Assure that each worker subject to subpart B of this part or each handler subject to subpart C of this part receives the protections required by this part.

(2) Assure that any pesticide to which subpart C of this part applies is used in a manner consistent with the labeling of the pesticide, including the requirements of this part.

(3) Provide, to each person who supervises any worker or handler, information and directions sufficient to assure that each worker or handler receives the protections required by this part. Such information and directions shall specify which persons are responsible for actions required to comply with this part.

(4) Require each person who supervises any worker or handler to assure compliance by the worker or handler with the provisions of this part and to assure that the worker or handler receives the protections required by this part.

(b) *Prohibited actions.* The agricultural employer or the handler employer shall not take any retaliatory action for attempts to comply with this part or 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.

### § 170.9 Violations of this part.

(a) Under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*) (FIFRA) section 12(a)(2)(G) it is unlawful for any person "to use any registered pesticide in a manner inconsistent with its labeling."

When this part is referenced on a label,