

CHAPTER 6

EXEMPTIONS AND EXCEPTIONS

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All WPS requirements are effective January 2, 2017 unless identified for a delayed implementation of January 2, 2018.

The WPS exempts owners of agricultural establishments from many, but not all, WPS requirements. The WPS also contains specific exemptions for crop advisors. This chapter describes the WPS exemptions and exceptions for owners of agricultural establishments and crop advisors.



WPS EXEMPTIONS FOR OWNERS OF AGRICULTURAL ESTABLISHMENTS 170.601

The WPS exempts owners of agricultural establishments and members of their immediate family from certain requirements. It is important to note that:



- No agricultural establishments that use WPS-labeled pesticide products are completely exempt from the WPS requirements,
- Owners/agricultural employers must provide full WPS protections for workers and handlers who are not in the owners' immediate families, and
- Owners and their immediate family members that qualify for the exemption must comply with some of the WPS requirements.

Definition of immediate family 170.305

The 2015 WPS definition of "immediate family" includes: spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. "First cousin" means the child of a parent's sibling (i.e., the child of an aunt or uncle).

Agricultural establishments that qualify for the exemption

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

If a majority of an agricultural establishment is owned by one or more members of the same immediate family, and the remaining portion of ownership is owned by members of another immediate family, the owner/immediate family exemption applies to both families and their immediate family members.

Owners of the agricultural establishment must provide all WPS protections for any employees or other persons on the establishment that are **NOT** members of their immediate family.

Owner means any person who has a present possessory interest (e.g., fee, leasehold, rental, or other) in an agricultural establishment.

The agricultural owner exemptions do **NOT** apply if:

- The farm, forest, nursery or enclosed space production facility is rented out or leased out to another person that is not an immediate family member and the owner has no part in the management or profit/loss from it.
- A person that is not an immediate family member is hired to operate a farm, forest, nursery or enclosed space production facility. In this case, the person is an employee of the agricultural establishment and may be considered an agricultural employer, but is not an owner of the agricultural establishment.

Immediate Family Exemption Examples:

When the exemption applies:

If Farmer #1 and immediate family members own 51% and Farmer #2 and immediate family members owns 49% of the same farm, all immediate family members of both families qualify for the immediate family exemption.

When the exemption does NOT apply:

If Farmer #1 and Farmer #2 jointly own 51% (or more) of the farm, but are not related as immediate family, and Farmer #3 and immediate family members own the other 49% or less) of the same farm, **NONE** of the farmers/owners or any of their immediate family members qualify for the owner and immediate family exemption.

- *There is no exemption for “family farms” per se;*
- *The “agricultural establishment” itself is NOT exempt from the WPS;*
- *This exemption only covers the owner and immediate family members.*

The immediate family exemption is only for owners of agricultural establishments; there is no immediate family exemption for owners of commercial pesticide handling establishments.

Exemptions for agricultural establishment owners

Qualifying owner(s) of the agricultural establishment **ARE NOT REQUIRED** to provide the following WPS protections to themselves or members of their immediate family:

- Minimum age for handlers and early-entry workers. 170.309(c)
- Provide emergency assistance. 170.309(f)
- Provide handler training prior to cleaning, repairing or adjusting pesticide application equipment. 170.309(g)
- Display, maintain, and provide access to pesticide safety, pesticide application and hazard information. 170.309(h) & 170.311
- Keep records of pesticide application and hazard information required by WPS. 170.309(h) & 170.311(b)
- Provide instruction in the safe operation of equipment used for mixing, loading, transferring or applying pesticides. 170.309(i)
- Ensure equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts and make repairs as needed prior to use. 170.309(j)
- Provide WPS training for workers and handlers. 170.401 & 170.501
- Ensure knowledge of labeling, application-specific, and establishment-specific information. 170.403 & 170.503
- Provide visual or voice monitoring of applicator when using a pesticide product that has the skull-and-crossbones symbol on the front panel unless required by product label directions. 170.505(c)
- Provide continuous visual or voice contact during fumigant applications. 170.505(d)
- Provide oral and posted notifications of worker entry restrictions (i.e., REIs in effect). 170.409
- Provide instructions on use of personal protective equipment (PPE); inspect, clean, store, and maintain PPE; and take measures to prevent and treat heat-related illness. 170.507(c)-(e)
- Maintain decontamination sites and supplies. 170.411 & 170.509
- Comply with early-entry provisions including minimum age, providing information, maintaining PPE and instructing on its use, instructing on how to prevent, recognize, and treat heat-related illness and providing decontamination supplies. 170.605(a)-(c) and (e)-(j)

Qualifying owners of agricultural establishments and their immediate family members **MUST COMPLY** with all of the following WPS requirements when using WPS-labeled pesticide products:

- Follow WPS requirements for respirator training, medical evaluation, fit testing, and recordkeeping when respirators are required on the pesticide labeling.
- Use the PPE listed on pesticide labeling.
- Keep immediate family members out of the treated area until the restricted-entry interval (REI) expires.
- Ensure pesticide is applied so it does not contact anyone, including members of the immediate family (requirement on label and in WPS).
- Keep everyone, including members of the immediate family, away from the treated area during the application and the application exclusion zone.
- Ensure that any pesticide applied is used in a manner consistent with the product's labeling.
- After January 1, 2018, any handler must **suspend** a pesticide application if a workers or other person is in the AEZ during an application.

Agricultural establishment owners and immediate family members are still eligible for the allowable exceptions to PPE, such as using a closed system.

The exemption does NOT apply to employees outside of immediate family.

The owner of an agricultural establishment must always provide all applicable WPS protections to workers and handlers employed by the establishment who are not members of the owner's immediate family. This includes:

- Workers or handlers who are employees receiving a wage, salary or other monetary compensation.
- Persons other than workers or handlers, such as those who clean PPE or repair, clean, or maintain contaminated pesticide handling equipment.

Any person performing worker or handler tasks who does not receive a wage, salary or other compensation is not a worker or handler protected by the revised WPS, regardless of family relationship to the owner.

WPS EXEMPTIONS AND EXCEPTIONS FOR CROP ADVISORS

Pesticide distribution as used in the definition of a crop advisor refers to assessing the pesticide coverage, dispersal, dissemination, pattern, etc., to determine if there was appropriate distribution of the material during application.

The WPS exemptions for certified crop advisors do NOT apply to non-certified crop advisors, including non-certified crop advisor employees operating under the supervision of a certified crop advisor.

Under the WPS, a “crop advisor” is a person who assesses pest numbers, damage, pesticide distribution or the status or requirements of agricultural plants. The WPS does not require a “crop advisor” to have any specific certification or training to be recognized as a crop advisor. However, certain WPS exemptions apply **only to certified crop advisors**.

Non-certified crop advisors must be provided with the WPS protections required for worker or handler activities depending on the tasks being conducted by the crop advisor. The crop advisor employer (including the self-employed crop advisor) is responsible for providing all required WPS protections to non-certified crop advisors.

Important definitions that apply to crop advisors

Commercial pesticide handling establishment means any enterprise, other than an agricultural establishment, that provides pesticide handler or **crop advising services** to agricultural establishments.

Certified Crop Advisor for the purposes of the WPS includes crop advisors certified as a Professional Crop Consultant by the National Alliance of Independent Crop Consultants (NAICC), or certified or licensed as a crop advisor by a program approved and recognized in writing by the EPA, or a State or Tribal agency responsible for pesticide enforcement. The approved program must cover all of the WPS handler pesticide safety training content listed in Appendix B: Worker Protection Standard Criteria. 170.601(b)

Handler means any person, including a self-employed person, who is employed by an agricultural employer or commercial pesticide handler employer **and ...performs tasks as a crop advisor** during any pesticide application or restricted-entry interval, or before the inhalation exposure level listed in the pesticide product labeling has been reached or one of the ventilation criteria established by WPS or the pesticide product labeling has been met.

Worker means any person, **including a self-employed person**, who is employed and performs activities directly relating to the production of agricultural plants on an agricultural establishment.

Hand labor means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with plants, plant parts, or soil and other surfaces that may contain pesticide residues, except hand labor does not include operating, moving, or repairing irrigation or watering equipment or **performing crop advisor tasks**.

Certified crop advisor exemptions 170.601 & 170.607(g)

Certified crop advisors are exempt from certain responsibilities under the WPS if the pesticide application is completed and all of the following conditions are met:

- The crop advisor is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by the EPA, or a State or Tribal agency responsible for pesticide enforcement.
- The certification or licensing program must include pesticide safety training that has all the information required of WPS handlers as applicable depending on the date of training (i.e., WPS handler pesticide safety training content required before January 2, 2018 is different from training content required after January 2, 2018 or 6 months from the date EPA announces the availability of training materials but not before January 2, 2018). See Appendix B: Worker Protection Standard Criteria.
- Only crop advising tasks are performed in the treated area.

Certified crop advisors who meet the requirements listed above can determine the appropriate PPE to wear when doing crop advising tasks during the REI. In addition, the employer of the certified crop advisor does not have to provide:

- The routine decontamination supplies and eye-flushing supplies for handlers. 170.509
- Emergency assistance, including providing transportation to a medical care facility and providing certain information to the treating medical personnel. 170.309(f) & 170.313(k)
- Access to the labeling or inform the certified crop advisor about the labeling and application-specific information regarding the safe use of the pesticide. 170.503(a)
- Sufficient information and directions to the certified crop advisor to ensure that they can comply with the WPS. 170.309(e) & 170.313(e)

Employers of crop advisors must provide all required WPS protections to any crop advisor employees who are not certified crop advisors.

Certified crop advisors can self-determine their PPE when doing crop advising tasks during the REI. They do not have to wear one of the sets of PPE allowed for non-certified crop advisors, which includes handler or early-entry worker PPE required by the labeling or the “universal set” of PPE specified on pg 93.

The following table summarizes some of the WPS exemptions for certified crop advisors and the corresponding requirements for non-certified crop advisors. There are other WPS requirements that apply to all crop advisors.

Table 5. WPS Exemptions for Crop Advisors

Certified crop advisor*	Non-certified crop advisor
Exempt from some provisions of WPS	No exemption
Self-determine PPE for entry during a REI	Is considered a handler for entry during an REI Must wear PPE required for non-certified crop advisors (see page 93)
Exempt from WPS pesticide safety training	Must have/receive pesticide safety training
Exempt from emergency assistance	Must be provided emergency assistance
Exempt from decontamination supply requirement	Must have/receive decontamination supplies

* A certified crop advisor organization must have written approval from EPA, State or Tribal agency to qualify for WPS exemptions

Employers of non-certified crop advisors must provide:

- Decontamination supplies:
 - 1 gal water/worker for routine washing.
 - 3 gal water/handler for routine washing.
- Pesticide safety training for workers or handlers, depending on whether the crop advisor will enter a treated area during a REI.
- Labeling and application-specific information regarding the safe use of the pesticide before performing any handler activities and access to the labeling.
- PPE, care and maintenance.
- Emergency assistance:
 - Transportation.
 - Provide the following information to treating medical personnel:
 - SDS, pesticide product name(s), EPA registration number(s), and active ingredient(s).
 - How the person was exposed.

No exemption for entry restrictions during an application

The certified/licensed crop advisor exemption does not apply when crop advisors or persons under their direct supervision enter an area **before an application is completed**. This applies to all entry restrictions during applications for outdoor production (AEZ) and enclosed space production facilities.

Crop advisors cannot be an early-entry worker. They must meet the requirements of a handler to enter a treated area while a REI is in effect.

PPE exceptions for crop advisors entering a treated area during a REI 170.601(b) & 170.607

Certified crop advisors can make their own determination for the appropriate PPE for entry into a treated area during a REI and substitute their self-determined set of PPE for the labeling-required PPE **for themselves only**.

Non-certified crop advisors performing crop advising tasks during the REI must wear one of the three following sets of PPE, but he/she may choose between any of the following options and select the least restrictive:

- The labeling-required PPE for handlers,
- The labeling-required PPE for early-entry workers, or
- A “universal set” of PPE that is good for conducting any crop advising task during the REI which consists of: coveralls, shoes plus socks, waterproof gloves, and protective eyewear (if the label requires protective eyewear for handlers).

The above PPE options for non-certified crop advisors may only be used when the following conditions are met:

- The application has been completed for at least four hours.
- No entry is allowed until any inhalation exposure level listed on the pesticide product labeling has been reached or any ventilation criteria established by the WPS (Chapter 3, Table 1. Entry Restrictions During Enclosed Space Production Pesticide Applications) or on the pesticide product labeling have been met.
- The non-certified crop advisor who enters a treated area during a REI only performs crop advising tasks while in the treated area.

Employees working under the supervision of a certified crop advisor

The CPHE, agricultural employer, or the certified crop advisors themselves (if self-employed) must provide each employee working under the supervision of a certified crop advisor with all required WPS protections, including the labeling-required PPE while working in a field during a REI, or PPE substitutions allowed for non-certified crop advisors.

The certified crop advisor exemption is ONLY for a certified crop advisor and does NOT extend to any non-certified crop advisor employees working under their direct supervision.

“Coveralls” are loose-fitting one- or two-piece cloth garments that cover the entire body except the head, hands and feet.

If a crop advisor is an employee of an agricultural establishment, they are either a handler or worker for that establishment but may use the crop advisor PPE exception when applicable.

Self-employed crop advisors are responsible for the same WPS requirements as a commercial pesticide handler establishment.

WPS training for non-certified crop advisors

Non-certified crop advisors are **not exempt** from WPS training requirements and they must receive the appropriate WPS handler or worker training as appropriate before performing any crop advising activities in a pesticide treated area.

Non-certified crop advisors are “handlers” if they enter treated areas to conduct crop advising activities while a REI is in effect, and therefore need to be trained as handlers.

Non-certified crop advisors are “workers” if they only enter treated areas after the REI has ended (but within 30 days after the REI), and therefore would only need to be trained as workers.

***Non-certified crop advisors cannot be early-entry workers.
They are either workers or handlers.***

Who is responsible for WPS compliance for certified or non-certified crop advisors?

The responsibility for providing WPS training and other applicable WPS protections to crop advisors depends upon their employment situation.

Table 6. Responsibility for Providing WPS Protections to Crop Advisors

If the crop advisor is a/an:	The entity responsible for WPS compliance is:
Direct employee of an agricultural establishment (e.g., Blue Sky Farms)	The agricultural employer must provide WPS protections
Employee of a commercial pesticide handling establishment (e.g., Acme Crop Services)	The commercial pesticide handler employer (CPHE) must provide WPS protections
Self-employed crop advisor (certified or non-certified) (e.g., Joe Solo Crop Consultant)	The crop advisor must self-provide applicable WPS protections, including pesticide safety training