

Worker Protection Standard: Owner and Immediate Family Exemption¹

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The Worker Protection Standard (WPS) is a Federal regulation designed to protect agricultural workers (people involved in the production of agricultural plants) and pesticide handlers (people mixing, loading, or applying pesticides or doing other tasks involving direct contact with pesticides). It has been in full implementation since 1995. This document provides general guidance to help you comply with the requirements of the Federal Worker Protection Standard (WPS) for agricultural pesticides, 40 CFR part 170, as amended in 2015. This document provides responses to some frequently asked questions about the WPS requirements but does not include all of the information necessary to be in compliance with the WPS, nor does it contain all of the requirements of the WPS. A complete reference for the WPS is provided by How to Comply with the 2015 Revised Worker Protection Standard for Agricultural Pesticides: What Owners and Employers Need to Know: https://www.epa.gov/sites/production/files/2016-09/documents/htcmanual_final.pdf.

What WPS requirements are owners of agricultural establishments and their immediate family exempt from under the exemption of the final rule?

The owner(s) of the establishment are not required to comply with the following provisions of the WPS for themselves or members of their immediate families when performing tasks as workers:

- Minimum age for early-entry workers

- Sections of the early-entry requirements
- Providing pesticide safety training or other safety information
- Cleaning, storing and maintaining personal protective equipment (PPE)
- Maintaining decontamination sites and supplies
- Providing notice of pesticide applications
- Posting information about pesticide applications and safety data sheets at a central location
- Providing emergency assistance

The owner(s) of the establishment are not required to comply with the following provisions of the WPS for themselves or members of their immediate families when performing tasks as handlers:

- Minimum age for handlers
- Providing pesticide safety training and other safety information such as restrictions during applications
- Knowledge of labeling and site-specific information and safe operation of equipment
- Ensuring proper use, cleaning, and maintenance of PPE and avoiding heat-related illness while using PPE
- Maintaining decontamination sites and supplies
- Providing emergency assistance

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What WPS requirements are owners of agricultural establishments and their immediate family required to comply with under the exemption of the final rule?

Owners of agricultural establishments and their immediate family members are **REQUIRED** to comply with all of the following WPS requirements when using WPS-labeled products:

- They must wear the PPE and any other work attire required by the pesticide labeling
- They must keep out of the treated area until the restricted-entry interval (REI) required by the pesticide labeling expires
- They must ensure the pesticide is applied so it does not contact any other persons, including members of the immediate family
- They must ensure that all persons, including members of the immediate family, are kept out of the treated area and the application exclusion zone (AEZ) during the application of the pesticide
- They must ensure that the pesticide applied is only used in a manner consistent with the pesticide's label
- They must ensure that any handler using a pesticide whose labeling requires a respirator, is provided a medical evaluation, fit testing and respirator training before using the respirator
- After January 1, 2018, any handler must suspend a pesticide application if a worker or other person is in the AEZ during the application

Why does the EPA feel that owners of agricultural establishments and their immediate families do not need the majority of the WPS protections when they likely face the same types of occupational pesticide exposure concerns as other farmworkers and pesticide handlers that are fully protected by the rule?

The EPA is concerned that owners of agricultural establishments and their family members that are engaged in worker and handler activities have occupational pesticide exposure, and the EPA believes that owners should provide the WPS protections to themselves and their immediate families. However, the EPA is also aware that many small family-owned farms need flexibility to be able to manage regulatory costs and burden. Therefore, the EPA has permitted the exemption to provide such farms and their owners with flexible options to manage these risks and the associated WPS requirements. The EPA expects that family members will take necessary precautions to protect other

family members and encourages owners and their families to follow WPS requirements to avoid exposure to pesticides and reduce the potential for pesticide-related illnesses and incidents.

How has the WPS exemption for owners of agricultural establishments and their immediate family changed from the current exemption in the rule?

The key changes to the exemption for owners of agricultural establishments and their immediate family include the following:

- The definition of immediate family has been expanded to include grandparents, grandchildren, in-laws, 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. Previously, the WPS defined "immediate family" to include only the spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters. This revised definition means more establishments qualify for the exemption and more owners and family members are exempt from many of the provisions of the new regulation.
- An exemption from the minimum age for handlers and early-entry workers has been added for owners and members of their immediate families.
- The exemption applies when a **majority** of the establishment is owned by persons who are "immediate family" members as defined in the WPS. The EPA's previous interpretation of the exemption required the establishment to be **wholly** owned by immediate family members.

What new familial relationships are included in the revised definition of "immediate family" in the final WPS rule?

Immediate family now 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.

Who does the WPS exemption for owners of agricultural establishments and members of their immediate family apply to and what establishments qualify?

The WPS exemption for owners of agricultural establishments and members of their immediate family applies only

to owners of agricultural establishments and members of their immediate family where a majority of an agricultural establishment is owned by one or more “immediate family” members as defined in the WPS. Where there are multiple owners of an establishment, a majority of the establishment must be owned by members of the same immediate family for the exemption to apply. The owner or agricultural employer must always provide all applicable WPS protections to workers and handlers employed by the agricultural establishment who are not members of the owner’s immediate family. The complete terms of WPS exemption for owners of agricultural establishments and their immediate family are in the final rule.

The WPS exemption for owners of agricultural establishments and members of their family applies only to establishments where a majority of an agricultural establishment is owned by one or more “immediate family” members as defined in the WPS. What is considered “majority ownership” under the revised WPS?

The exemption in the final rule applies 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 percent of the equity in the establishment is owned by one or more members of the same immediate family as defined in the WPS.

How does the exemption apply to workers and handlers who are employed by an establishment that is covered by the exemption for owners of agricultural establishments and immediate family members, but they themselves are not members of the owner’s immediate family?

The owner or agricultural employer 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.

Is there an exemption or exception in the WPS for family farms?

No. The WPS does not provide an **exception** for “family farms” per se. The revised WPS **exempts** owners of agricultural establishments and members of their immediate family from certain requirements, as does the original WPS. It is important to note that (1) no agricultural establishments that use WPS-covered pesticides are completely exempt from the WPS requirements, (2) owners/agricultural employers must provide full WPS protections for

workers and handlers who are not in the owners’ immediate families, and (3) even owners and their immediate family members that qualify for the exemption must comply with some of the WPS requirements.

How do the new WPS requirements related to respirator use, (i.e., training, medical evaluation, fit-testing and recordkeeping) apply to owners of the establishment and members of their immediate families?

Employers must provide the protections related to respirator use to all persons employed on the establishment, even themselves and members of the owner’s immediate family.

Can owners of the establishment and members of their immediate families take advantage of the WPS exceptions for early entry into a treated area and the WPS exceptions to label-required PPE? Do the requirements of those exceptions apply?

Yes, they may use the exceptions for early entry and exception to label-required PPE provide for in the final WPS rule, but they must comply with all of the specific requirements applicable to each of the exceptions listed in the rule.

Additional Information

Fishel, F.M. 2015. *A Summary of Revisions to the Worker Protection Standard—2015*. PI 261. Gainesville: University of Florida Institute of Food and Agricultural Sciences. <http://edis.ifas.ufl.edu/pi261>

Fishel, F.M. and T. Sanchez. 2016. *Worker Protection Standard: Application Exclusion Zone (AEZ)*. PI-263. Gainesville : University of Florida Institute of Food and Agricultural Sciences. <http://edis.ifas.ufl.edu/pi263>

US EPA. 2016. *How to Comply with the 2015 Revised Worker Protection Standard for Agricultural Pesticides: What Owners and Employers Need to Know*. EPA 735-B-16-001. United States Environmental Protection Agency. https://www.epa.gov/sites/production/files/2016-09/documents/htcmanual_final.pdf.