

CHAPTER 1

DETERMINING YOUR WPS RESPONSIBILITIES

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



DOES THE WPS APPLY TO YOU?

The WPS applies to you if you **use a WPS-labeled pesticide product** (that contains an AGRICULTURAL USE REQUIREMENTS box under DIRECTIONS FOR USE) on an “agricultural establishment” directly related to the production of an “agricultural plant.” If you also **employ workers or handlers** (directly or through a labor contractor), you will have additional WPS responsibilities. In the WPS, employers of workers or handlers are referred to as “agricultural employers” or “commercial pesticide handler employers” depending on the situation.

Employers are responsible for making sure that workers and handlers receive the protections required by the pesticide labeling and the WPS. The term “employ” and “agricultural employer” have special meanings in the WPS — you are an employer even though you are self-employed or use only members of your own family to do the work on your establishment. **You are also considered the employer when you hire workers or handlers through a labor contractor. However, an owner or agricultural employer who hires handlers through a commercial pesticide handler employer is not considered the handler employer for those handlers.**

The WPS applies to you if:

<p>You own or operate an agricultural establishment directly related to the production of an agricultural plant.</p>	<p>Even if you are the owner of a farm, forest, nursery, or an enclosed space production facility (e.g., greenhouse, grow house, hoop house, high tunnel) and you or members of your “immediate” family do all the work, you are a “WPS employer” and must comply with some of the requirements described in this manual.</p>
<p>You hire or contract for the services of agricultural workers to do tasks related to the production of agricultural plants on an agricultural establishment.</p>	<p>This includes hiring labor contractors and others who contract with growers to supply workers or handlers to work on your agricultural establishment. <i>The labor contractor can be assigned WPS responsibilities but is not responsible for your WPS compliance.</i></p>
<p>You employ researchers who help produce agricultural plants.</p>	<p>There is an exemption from the WPS requirements when conducting research on unregistered pesticides. This exemption DOES NOT include research on unregistered uses of a registered pesticide product or maintenance pesticide applications applied to agricultural plants subject to research.</p>

<p>You operate a business in which you (or people you employ) apply pesticides that are used for the production of an agricultural plant.</p>	<p>Commercial pesticide handlers and their employees are included in the WPS even if some of the pesticide handling tasks (mixing, loading, disposal, etc.) take place somewhere other than the agricultural establishment that is the treatment site. An example would be mixing/loading at the commercial handling establishment or an airport hangar.</p>
<p>You operate a business in which you (or people you employ) perform tasks as a crop advisor on any agricultural establishment.</p>	<p>“Crop advisor” means any person who is assessing pest numbers or damage, pesticide distribution, or the status, condition, or requirements of agricultural plants. Examples include crop consultants and field scouts. For a description of WPS provisions for certified and non-certified crop advisors, see Chapter 6: Exemptions and Exceptions.</p>
<p>You are a pesticide handler who applies WPS-labeled pesticide products on an agricultural establishment.</p>	<p>Handlers have several specific responsibilities under WPS separate from employers of handlers that deal with the actual application of the pesticide and wearing PPE.</p>

Under the WPS, you may be one or several of the above.

Know where you stand!

While handler employers have primary responsibility for compliance with most WPS requirements, pesticide handlers *DO* have several specific responsibilities under the WPS including the requirement to wear the label-required personal protective equipment when handling pesticides and to follow measures to protect workers and other persons during pesticide applications.

WHO HAS WPS RESPONSIBILITIES?

The WPS requires agricultural employers and commercial pesticide handler employers to provide the protections required by this rule.

- An **agricultural employer or commercial pesticide handler employer** must provide WPS protections to their worker or handler employees.
- **Certain WPS protections must also be provided to agricultural establishment owners or their immediate family members** regardless of whether or not other workers or handlers are employed on the establishment.
- In addition, **handlers** have several specific responsibilities under the WPS.

In summary, you have WPS responsibilities if you are:

An agricultural employer – any person who is an owner of, or is responsible for the management or condition of an agricultural establishment, and who employs any worker or handler.

A commercial pesticide handler employer – any person, other than an agricultural employer, who employs any handler to perform handler activities on an agricultural establishment. A labor contractor who does not provide pesticide application services or supervise the performance of handler activities, but merely employs laborers who perform handler activities at the direction of an agricultural or handler employer, **is not a commercial pesticide handler employer**.

A handler – any person, including a self-employed person, who is employed by an agricultural employer or commercial pesticide handler employer and performs certain activities including but not limited to mixing, loading or applying pesticides. See the Introduction (page 4) for a full list of handler activities.

ARE YOU A “WORKER” EMPLOYER, A “HANDLER” EMPLOYER OR BOTH?

The kinds of tasks your employees do, determine whether you are a “worker” employer, a “handler” employer or both.

What activities employees perform will determine whether or not you (as their employer) must comply with the WPS and if so, which requirements apply to your situation. You need to provide all of the protections that apply to the type of employee you have. See page 4 to determine if your employees are “workers” (including “early-entry workers”) or “handlers.”

- The same employee may be a worker at times and a handler at other times, depending on the type of task being performed.
- You may be both a worker employer and a handler employer depending on the tasks that you and your employees do.
- “Early-entry workers” are also “workers” under the WPS.
- You and your “immediate family” may be exempt from most of the WPS but not all. Make sure you know the WPS requirements you and your family must comply with. See Chapter 6: Exemptions and Exceptions.
- Both general-use pesticides and restricted-use pesticides are covered by the WPS.

Hint: Training employees as handlers provides flexibility by ensuring they have met the training requirements for “workers” and “handlers.”

Farms, forests and nurseries could operate as outdoor production or enclosed space production, depending on the situation. Enclosed space production includes greenhouses, mushroom houses, hoop houses, high tunnels and grow houses.

WHICH ESTABLISHMENTS ARE COVERED BY THE WPS?

The majority of establishments covered by the WPS include traditional crop-producing agricultural establishments that are farms, forest operations or nurseries involved in either outdoor or enclosed space production and employ workers or handlers. The WPS also covers family owned agricultural operations where family members are the only persons who work on the establishment.

The WPS applies to any establishment involved in growing, maintaining or producing agricultural plants (includes, but is not limited to, grains, fruits and vegetables; wood fiber or timber products; flowering and foliage plants and trees; seedlings and transplants; and turf grass produced for sod) for commercial and/or research or experimental purposes. Commercial production includes production of plants for sale, trade or in-house use on the establishment or another facility.

This means the following facilities or operations that are not generally recognized as traditional agricultural production establishments may be considered an agricultural establishment for the purposes of the WPS and are covered by the rule if they use WPS-labeled pesticide products:

- Nurseries, garden centers or other similar operations where nursery and ornamental bedding plants are maintained for sale (retail or wholesale).
- Dairy farms that produce hay for feed for their cattle.
- Golf course establishments that also produce sod and/or ornamentals in one area on their facility/establishment for transplanting into the golf course portion of the facility.
- Public park operations/facilities and/or privately-held ornamental garden operations/facilities that produce ornamental plants in one area on their establishment for transplanting into the permanent park or ornamental planting portion of the facility.
- Theme park operations (e.g., Disney World, Universal Studios, Sea World, etc.), hotels, and/or other entertainment operations that produce ornamental plants in one area on their establishment for transplanting into the permanent theme park grounds or ornamental planting portions of the facility.
- Prisons that have “prison farms” where agricultural plants are produced and the prisoners are employed as workers and handlers.
- University extension agricultural research facilities that conduct research on agricultural plants.
- Educational classes or vocational agriculture programs where agricultural plants are produced as part of a class or program, students act as workers and/or handlers, and students receive monetary compensation such as a stipend, or free or reduced tuition.
- Pine straw harvesting/production operations.
- Government owned or managed agricultural operations.

The WPS also applies to any establishment operating as a commercial (for-hire) pesticide handling establishment that applies WPS-labeled pesticide products on agricultural establishments or provides crop advising services for an agricultural establishment.

WHICH PESTICIDE USES ARE COVERED BY THE WPS?

170.303(a)

Most pesticide uses involved in the indoor or outdoor production of agricultural plants on an agricultural establishment are covered by the WPS. This includes pesticides used on plants and pesticides used on the soil or planting medium the plants are (or will be) grown in. Both general-use and restricted-use pesticides are covered by the WPS. A pesticide product is covered by the WPS if the following statement is in the Directions for Use section on the product labeling:

AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR 170. This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment, restricted-entry intervals and notification of workers.

Example of WPS-labeled pesticide product statement.

When a pesticide product with labeling that refers to the WPS is used on an agricultural establishment directly related to the production of an agricultural plant, WPS requirements must be complied with. Although some protective requirements for workers and handlers (PPE, REI, etc.) are clearly identified on the pesticide product label, other WPS requirements are referred to through the following statement on the label: **It is violation of federal law to use a pesticide product in a manner inconsistent with its labeling.**

WHICH PESTICIDE USES ARE NOT COVERED BY THE WPS? 170.303(b)

Some pesticide uses are not covered by the WPS, even when the “AGRICULTURAL USE REQUIREMENTS” section is on the labeling. For example, if the pesticide labeling bears an “AGRICULTURAL USE REQUIREMENTS” section, but the product can also be applied to rights-of-way, the rights-of-way use is not covered by the WPS.

The WPS does not apply when a pesticide product label requires compliance with the WPS and is applied on an agricultural establishment in the following circumstances:

- As part of government-sponsored public pest control programs over which the owner, agricultural employer and handler employer have no control (e.g., mosquito abatement and Mediterranean fruit fly eradication).
- On plants other than agricultural plants, which may include plants in home fruit and vegetable gardens, home greenhouses, and permanent plantings for ornamental purposes (e.g., plants that are in ornamental gardens, parks, public or private landscaping, lawns or other grounds that are intended only for aesthetic purposes or climatic modification).
- For control of vertebrate pests such as rodents, **unless directly related to the production of an agricultural plant.**
- As an attractant or repellent in traps.
- On the harvested portions of agricultural plants or on harvested timber.
- For research uses of unregistered pesticides.
- On pasture or rangeland where the forage will not be harvested for hay or for any use.
- In a manner not directly related to the production of agricultural plants, including, but not limited to, livestock pest control (e.g., pesticide applications on livestock or other animals, or in or about animal premises), structural pest control and control of vegetation in non-crop areas.

Hay production is a WPS use (including as feed for your own animals). Hay incidentally harvested from rights-of-ways is not a WPS use.

WHAT IF THE LABELING CONFLICTS WITH THE WPS?

Labeling overrides WPS 170.303(c)

If the pesticide product labeling contains specific instructions or requirements that conflict with the requirements of the Worker Protection Standard, **follow the instructions or requirements on the labeling**, except as allowed in the:

- WPS exemptions for crop advisors and owners of agricultural establishments and their immediate families.
- WPS exceptions to PPE requirements specified on pesticide product labeling.
- WPS exceptions for entry by workers during restricted-entry intervals (early-entry workers).

For example, some pesticide product labeling may:

- Prohibit any early-entry activity, including short-term and emergency tasks.
- Allow an early-entry activity that the WPS does not allow.
- Require the use of personal protective equipment even if closed systems are used for mixing and loading.
- Establish a different area that people must be kept out of during and after a pesticide application, such as the soil fumigant requirements.
- Require emergency eye flushing water in additional situations for products that are eye irritants.

Exceptions to labeling statements

The WPS allows certain exceptions to three specific pesticide labeling requirements: **personal protective equipment (Chapter 4)**, **restricted-entry intervals (Chapter 3)**, and **double notification (Chapter 3)** (which is the requirement on some labeling for both oral warnings and posting treated areas). The Agricultural Use Requirements box on the pesticide product labeling contains the WPS exceptions.

