

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 170**

[OPP-250101A; FRL-4950-4]

**Exception to Worker Protection Standard Early Entry Restrictions for Limited Contact Activities****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Administrative exception decision.

**SUMMARY:** EPA is granting an administrative exception to the 1992 Worker Protection Standard (WPS) allowing early entry into pesticide treated areas to perform certain limited contact activities. The exception is in response to a petition that the Agency received from many organizations in the agricultural community. This exception allows workers to perform tasks, which if delayed would result in significant economic loss, and that result in minimal contact with pesticide-treated surfaces, for up to 8 hours per 24-hour period during a restricted entry interval. EPA is granting this exception because it believes the benefits of this exception outweigh any resulting risks and the potential risk from this exception is not unreasonable.

**EFFECTIVE DATE:** May 3, 1995.

**ADDRESSES:** The Agency invites any interested person who has concerns about the implementation of this action to submit written comments identified by docket number "OPP-250101A" to: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP-250101A." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VIII of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Linda Strauss or Joshua First, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location, telephone number and e-mail: 1921 Jefferson Davis Highway, Crystal Mall 2, room 1121, Arlington, VA 22202, (703) 305-7371, strauss.linda@epamail.epa.gov or first.josh@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** This is one of a series of Agency actions to revise elements of the WPS. These actions were published on January 11, 1995 (60 FR 2820), and proposed to:

- (1) Shorten the time periods before which employers must train workers and retrain workers and handlers in pesticide safety.
- (2) Exempt those who perform crop advising tasks from certain requirements.
- (3) Allow early entry to pesticide treated areas to perform certain time-sensitive irrigation activities.
- (4) Allow early entry to pesticide treated areas to perform certain time-sensitive activities resulting in "limited contact" with pesticide treated surfaces.
- (5) Allow workers to enter areas treated with certain lower risk pesticides after 4 hours rather than 12 hours.

This action addresses allowing early entry to pesticide treated areas to perform certain time-sensitive limited contact activities. Final determinations on the other four actions mentioned above are being published at the same time as this action.

**I. Background**

On August 21, 1992, EPA issued a final rule (57 FR 38102) revising the Worker Protection Standard (WPS) for agricultural pesticides (40 CFR part 170). The WPS prohibits routine entry by workers into pesticide treated areas during restricted-entry intervals (REIs).

An REI is the time after the end of a pesticide application during which entry into the treated area is restricted. Section 170.112(e) of the WPS provides a process for considering exceptions to this prohibition against early entry into treated areas.

In July 1994, EPA was petitioned by a coalition of agricultural organizations to allow individuals to perform tasks involving limited contact with treated surfaces in pesticide treated areas before the expiration of the REI.

EPA considered the petition, held several work sessions with the National Association of State Departments of Agriculture and other co-signers of the petition exploring the need for and scope of limited contact tasks, and proposed granting a nationwide exception for limited contact activities. EPA solicited comments on the proposed exception and received comments supporting and opposing the proposed exception. Information received during the public comment period persuaded EPA that there could be significant economic impacts if certain limited contact tasks were prohibited during the REI.

**A. WPS Early Entry Restrictions**

In general, the WPS prohibits agricultural workers from entering a pesticide-treated area during the REI. REIs are based on the toxicity of the active ingredient in the product, and other factors. They are specified on the pesticide product label and typically range from 12 to 72 hours or possibly longer where product-specific REIs have been determined.

Additionally, workers engaging in early entry work are not permitted to engage in hand labor, which results in substantial contact with treated surfaces. The WPS defines hand labor as any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with surfaces (such as plants or soil) that may contain pesticide residues.

**B. Exceptions to Early Entry Restrictions**

Currently, the WPS contains the following exceptions to the general prohibition against worker early entry: Entry resulting in no contact with treated areas; entry allowing short-term tasks to be performed with PPE and other conditions; entry to perform tasks associated with agricultural emergencies; and an exception process for EPA to determine on a case-by-case basis whether entry is warranted for activities not covered in the previous exceptions.