

## II. EPA's Exception Decision

EPA is granting an exception to the early-entry prohibition to allow limited contact tasks to be performed. This decision is based on the information submitted in comments and EPA's experience over many years of reviewing agricultural practices in connection with pesticide use. EPA has concluded that this exception appropriately balances the potential risk of worker exposure and the significant economic impact which could be incurred if growers are not allowed to perform these necessary tasks. The exception is designed to minimize risk to workers conducting early-entry "limited contact tasks" while providing growers the needed flexibility to perform these tasks.

EPA has reviewed information on the risks and benefits associated with granting an exception for necessary limited contact activities and believes that the benefits outweigh the risks. This assessment is based on EPA's evaluation of the risk reduction provided by the provisions contained in this exception and the benefits which may be obtained by allowing the exception. Furthermore, where the benefits outweighed the risks, EPA, in the context of the WPS, has previously made exceptions to the general prohibition against early entry, even for hand labor activities. (See Hand Labor Tasks on Cut Flowers and Ferns Exception at 57 FR 38175, August 21, 1992). Because hand labor as defined in the WPS involves substantial worker contact with surfaces that may contain pesticide residues, and this exception is restricted to limited contact tasks where workers' contact with treated surfaces would be minimal and limited to the workers' feet, lower legs, hands, and forearms, EPA believes that pesticide exposure to workers performing limited contact tasks under the terms of this exception would be less than exposures to workers performing hand labor tasks in the same treated area. Therefore, EPA believes that early entry under the terms of the exception (see Unit IV of this document), will not pose unreasonable risk to workers performing limited contact tasks.

The category of activity envisioned by this exception includes only those "limited contact tasks" which cannot be delayed until the expiration of the REI. The definition of a task that cannot be delayed is one that, if not performed before the expiration of the REI, would cause significant economic loss and where there are no alternative practices which would prevent the loss. By this definition, EPA has defined the category

of permissible tasks, with significant limits on the type and duration of activity, and the economic circumstances under which the exception can be applied. Taken together, these elements limit the exception to only high-benefit activities.

Further, EPA has included significant provisions which will limit pesticide exposure and risk to employees performing "limited contact tasks." This exception specifically: prohibits hand labor activity; prohibits entry into a treated area during the first 4 hours after a pesticide application and until applicable ventilation criteria and any label-specified inhalation exposure level have been met; limits the time in treated areas under a restricted entry interval for any worker to 8 hours in any 24-hour period; requires that any contact with treated areas by a worker be minimal and limited to feet, lower legs, hands, and forearms; excludes pesticides requiring "double notification"; requires PPE; directs the agricultural employer to notify workers of specific information concerning the exception; and ensures that the requirements of § 170.112 (c)(3) through (c)(9) are met. These terms will limit worker exposure and, consequently, worker risk.

The WPS's general prohibition against early entry is designed to limit worker exposure during the critical restricted-entry interval. In granting this exception, EPA has weighed the risk to workers against the benefits to be gained from early entry to perform "limited contact tasks" and finds justification for this exception. EPA believes that this exception adequately addresses and balances worker exposure concerns with the commercial needs of agriculture.

## III. Summary of Major Issues

EPA received over 80 comments on the proposed exception. Comments were received from State agencies, grower groups, farm worker groups, and individuals.

### A. Need for Exception

Comments received primarily from growers noted the need for the exception in order to add flexibility and practicality to the WPS, and thereby help ensure grower compliance. Without this exception, growers projected reduced production due to the inability to perform various tasks which would involve minimal contact with surfaces containing pesticide residues but which would need to occur during times where early entry was prohibited. Growers provided examples of situations that would require early entry to perform limited contact tasks such as: Opening windows or vents from the

inside of a greenhouse, replacing electrical fuses for pumps, unloading beehives for pollinating crops, placing small equipment (e.g., weather monitoring stations) in fields, performing frost protection measures, removing equipment, and removing livestock from crop areas.

Most comments opposing the exception identified risk to workers as a primary concern. These comments noted the existence of exceptions to early entry in the 1992 WPS and questioned the need for this exception, as well as the ability to properly interpret and enforce the exception.

EPA remains concerned about worker risk during the restricted-entry interval. Additionally, EPA continues to be concerned that even PPE, decontamination supplies, and training may not adequately reduce the risk to workers if an unlimited time is allowed in an area under an REI.

EPA provided the existing WPS early entry exceptions to address short term, time-sensitive, critical, emergency situations. EPA continues to believe that entry to perform routine tasks, particularly hand labor tasks such as harvesting, is rarely needed, especially when the REI is 72 hours or less.

While the existing WPS exceptions cover most unanticipated circumstances necessitating early entry, EPA believes there may be a few occasions when the existing exceptions do not provide the flexibility to deal with non-routine, non-hand labor tasks for more than the one hour that is provided in the short-term entry exceptions. This exception is designed to address such situations, but EPA expects that it will rarely be needed.

EPA believes that the entry requirements set out in this exception acceptably reduces worker contact with pesticide treated surfaces by limiting the duration of the contact; by limiting contact to feet, lower legs, hands, and forearms; by requiring PPE to protect the worker from the treated surfaces; by not allowing hand labor activities, as defined by the WPS, to be performed, as well as by other conditions.

### B. Definition of Limited Contact Task

Most comments supported the EPA definition of limited contact in the proposal. Some comments, however, suggest expanding the scope to include hand labor tasks and removing the condition that tasks must be those that cannot be delayed until after the REI.

EPA believes that the exclusion of hand labor is critical to eliminate specific tasks that could result in greater exposure and unacceptable risk. Excluding hand labor tasks from the