

SUPPLEMENTARY INFORMATION:

I. Background

Section 170.112(e) of the Worker Protection Standard for Agricultural Pesticides (WPS) (40 CFR part 170), published at 57 FR 38102 (August 21, 1992), provides the procedure for considering exceptions to the WPS provision that limits early entry during a restricted entry interval (REI) to perform agricultural tasks. EPA has received a request for exception to the early entry limitations for performing limited contact tasks from the National Association of State Departments of Agriculture (NASDA). EPA is considering a national exception to the WPS early entry restrictions for performing limited contact tasks. The purpose of this Notice is to solicit further information and comment to assist EPA in determining whether the conditions of entry under the proposed exception would pose unreasonable risks to workers performing the permitted limited contact tasks during a restricted entry interval. In addition, EPA solicits further information about the economic impact of granting or not granting the proposed exception.

This proposed WPS rule amendment is one of a series of Agency actions in response to concerns raised since publication of the final rule in August 1992 by those interested in and affected by the rule. In addition to this proposed amendment, EPA is publishing four other notices soliciting public comment on concerns raised by various affected parties. Other actions EPA is considering include: (1) modification to the worker training requirements; (2) exceptions to early entry restrictions for irrigation activities; (3) reduced restricted entry intervals (REIs) for low risk pesticides; and (4) requirements for crop advisors. The Agency is interested in receiving comments on all options and questions presented.

A. Worker Protection Standard

The Worker Protection Standard (WPS) promulgated at 57 FR 38102, August 21, 1992, is intended to reduce the risk of pesticide exposure and related poisonings and injuries among agricultural workers and pesticide handlers. The WPS includes provisions to: (1) eliminate or reduce exposure to pesticides; (2) mitigate exposures that occur; and (3) inform employees about the hazards of pesticides. Provisions to reduce exposure include application restrictions, use of personal protective equipment (PPE), and entry restrictions.

B. Entry Restrictions

Agricultural workers, in general, are prohibited from entering a pesticide-treated area during the restricted entry interval (REI) specified on the product labeling. REIs are the time period after the end of the pesticide application during which entry into the pesticide treated area is restricted. In the absence of pesticide-specific REIs, the WPS establishes a range of interim REIs, from 12 to 72 hours, depending upon the toxicity of the active ingredient(s) and other factors.

C. Exceptions to Entry Restrictions

The WPS contains exceptions to the general prohibitions against workers entering a pesticide-treated area during the REI. The exception provisions of §170.112 permit entry into the treated area during the REI (i.e. early entry) under specified conditions to perform tasks that result in contact with treated surfaces:

(1) *Short term tasks.* Section 170.112(c) permits exceptions to the general prohibition on work in treated areas during REIs for short-term tasks, with adequate PPE, decontamination, and exposure time limits.

(2) *Agricultural emergencies.* Section 170.112(d) permits exceptions to the prohibition against entry into treated areas during REIs for agricultural emergencies. The WPS permits early entry by workers to perform tasks while wearing early-entry PPE, and without time limits, in response to an agricultural emergency.

(3) *EPA-approved exception.* Section 170.112(e) permits exceptions to the prohibition on work in treated areas during REIs when EPA has approved a special exception. Case-by-case exceptions may be granted if affected persons or organizations persuade EPA that the benefits of the exception outweigh the risks associated with the exception.

In addition, §170.112(b) establishes an exception for activities where no contact with treated surfaces will occur. Under this provision, often referred to as 'no contact' entry, workers are allowed unlimited entry into pesticide-treated areas before the expiration of the REI without personal protective equipment when no contact with pesticide residues on treated surfaces or in soil, water, or air will occur.

II. Request for Exception and Supporting Evidence

In a July 8, 1994 petition for rulemaking, NASDA requested that EPA reduce WPS requirements for low contact work during the REI. In

particular, NASDA asked for limited PPE for low contact activities, consisting of coveralls, chemical-resistant gloves, and footwear, and a "somewhat longer period than the one-hour in twenty-four hour period currently allowed by the exception for short-term activities."

In a subsequent meeting with EPA on low contact activities, NASDA suggested defining low contact as follows:

Low contact means a task related to the production of agricultural plants that results in minimal body exposure. Personal protective equipment cannot be used to achieve low contact status for purposes of this definition, but rather the level of contact must be inherent in the nature of the task performed. The task must also meet one of the following:

(1) Results in only incidental worker body contact with treated surfaces due to the stage of growth (seedlings) or nature of the crop (size of plants), the way the task is performed (use of long handled tools or operator placement on equipment), or the way the pesticide was applied (soil incorporated).

(2) Is a very short-term task, involving worker body contact with treated surfaces that are of only a few minutes' duration and which occur at widely separated intervals.

This proposed definition was developed with the help of the American Association of Pesticide Control Officials (AAPCO).

NASDA also provided EPA with lists of tasks that they assert could require entry into treated areas during an REI, and proposed that allowance for the accomplishment of these tasks be covered under any definition of 'low contact'. The lists of proposed low or limited contact activities were provided to NASDA by state pesticide regulatory agencies. In reviewing the lists of tasks, EPA found: (1) many of the tasks may already be allowed under the exception for activities with no contact set out in §170.112(b), (2) other tasks were identified as clearly hand labor tasks or handler tasks that could result in substantial contact with pesticide treated surfaces, (3) many tasks were irrigation-related activities, which EPA is addressing in a separate exception proposal, and (4) some were non-hand labor tasks that could, in some circumstances, be accomplished with minimal contact with pesticide residues on treated plants, soil, and other surfaces, depending on how the task was performed.

III. EPA's Exception Proposal**A. Background**

NASDA's membership includes state Departments of Agriculture, the state agencies that, in most instances, are responsible for enforcing the WPS. EPA