

In addition to the consultations prior to proposal, EPA has had several informal consultations regarding the proposed rule with some States through the EPA regional offices and at regularly scheduled State meetings. No significant issues or information was identified as a result of EPA's discussion with the States.

List of Subjects in 40 CFR Part 170

Environmental protection, Administrative practice and procedure, Labeling, Occupational safety and health, Pesticides and pest.

Dated: April 24, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[OPP-250098A; FRL-4950-5]

Administrative Exception to Worker Protection Standard Early Entry Prohibition for Irrigation 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 irrigation activities. The exception is in response to formal requests the Agency received from the States of California and Hawaii, a petition from many organizations in the agricultural community, and informal requests from other States. The exception allows workers to perform necessary irrigation activities, which if delayed could cause significant economic loss, and that result in minimal contact with pesticide-treated surfaces, for a maximum of 8 hours in a 24-hour period during a restricted-entry interval (REI). EPA is granting this exception because it believes the benefits outweigh the 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-250098A" 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-250098A." 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 VII 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.

The exception requests and all comments submitted on the proposed exception are available for public inspection in the Office of Pesticide Programs' public docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Sara Ager, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Rm. 1121, Crystal Mall #2, Arlington, VA, (703) 305-7666, ager.sara@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; and (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 irrigation activities. Final determinations on the other four actions mentioned above are being published elsewhere in this issue of the **Federal Register**.

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 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 to treated areas.

In 1994, both California and Hawaii specifically requested that EPA grant an exception to allow early entry to pesticide-treated areas, prior to the expiration of the REI, to perform necessary irrigation tasks involving limited contact with treated surfaces. Specifically, the Agency was asked to consider allowing unlimited early entry during the REI if workers would not have substantial contact with pesticide-treated surfaces. The Agency was also asked to consider establishing a single requirement for personal protective equipment (PPE) that could be worn by irrigation workers.

The irrigation exception requests from California and Hawaii, and a petition from a coalition of agricultural and commodity groups, persuaded EPA that there is a potential for significant economic impact if growers could not tend to irrigation tasks in a timely manner due to REIs. In response to these requests, EPA proposed a national exception for irrigation activities to be performed within the REI, provided certain conditions were met.

EPA received comments supporting and opposing the proposed exception.

Information received during the public comment period persuaded EPA that there could be significant economic impact if irrigation activities, resulting in minimal contact, were prohibited during the REI. EPA has been persuaded by comments that the irrigation tasks are relevant to the production of a wide variety of agricultural plants across a broad geographic area.

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 pesticide product labels 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. WPS 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, with required 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.

II. EPA's Exception Decision

EPA is granting an exception to the early-entry prohibition to allow irrigation tasks to be performed. 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 tend to irrigation tasks at necessary times.

The exception is designed to minimize risk to workers conducting early-entry irrigation tasks while providing growers the needed flexibility to irrigate their crops. EPA has reviewed

information on the risks and benefits associated with granting an exception for necessary irrigation 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 has, in the context of the WPS, 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 (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 limited to irrigation 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 irrigation 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 irrigation workers.

The category of activity envisioned by this exception includes only those irrigation 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 a category of tasks with significant limits placed on the type and duration of activity in which a worker can be engaged 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 irrigation workers. This exception specifically forbids 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 REI 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)-(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 REI. In granting this irrigation exception, EPA has weighed the risk to irrigation workers against the benefits of early-entry irrigation activities 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 irrigation exception. Comments were received from State agencies, grower groups, farmworker groups, and individuals.

A. Need for the Exception

An exception for allowing irrigation activities is needed because failure to irrigate crops in a timely manner could cause a significant economic impact. The existing exceptions do not adequately address irrigation needs.

Commenters described many circumstances where failure to irrigate before the expiration of the REI could cause a significant economic impact. Comments from nurseries and greenhouses stated that frequently they need to water more than once a day. Several commenters stated their dependency on the irrigation districts for water and noted that often a grower has only a few hours notice before water arrives from the irrigation contractor. USDA cited the need for the exception for United States agriculture to be competitive in international markets.

EPA agrees with these comments, and is persuaded that it is necessary to allow early entry during the REI to perform irrigation activities. EPA has written specific restrictions into this exception to reduce risk to irrigators.

B. Geographic Limitation

The States of California and Hawaii formally requested an exception for irrigation activities. In response to other States, informally expressing the need to irrigate before the expiration of the REI, the Agency requested comments on the need for a national exception. Comments were received from: Arkansas, Arizona, California, Delaware, Florida, Hawaii, Illinois, Kansas, Louisiana, Maryland, Missouri,

Montana, North Carolina, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, and Washington. Most comments opposed a geographic limitation and several commenters stated their irrigation needs were similar to California and Hawaii. The greenhouse and nursery industry, which is national in scope, expressed the importance of watering-in pre-emergent herbicides. One commenter stated that a geographic limitation could pose an economic disadvantage to parts of the country where the exception is not applicable. However, another commenter stated, that a national exception would heighten the risk of poisonings and another commenter stated, that criteria should be established and applied on a case-by-case basis.

Based on the comments received, EPA has concluded that a nationwide irrigation exception is necessary. Although irrigation practices and the circumstances in which irrigation is employed vary considerably throughout the country, the need for early entry to perform irrigation tasks, that cannot be delayed without incurring significant economic loss, is common nationwide. The provisions of the exception which define the category of acceptable tasks limits those activities to ones which are needed nationwide. Granting exceptions for certain geographic areas is appropriate to address local, particularized needs. But in the present instance, EPA believes that such a case-by-case approach is unwarranted and overly burdensome given that the need is common and amenable to a more generalized exception.

The disruption of needed irrigation can lead to significant and even catastrophic economic losses. All types of irrigation require occasional maintenance, repair or adjustment necessitating early entry. This exception will allow such activities during the REI only if the failure to act during the REI will result in significant economic loss. By limiting the exception in this manner, EPA intends to prevent use of the exception for routine irrigation activities.

Furthermore, EPA's analysis takes into account the concern that this exception should adequately protect worker safety. Among other limitations to ensure appropriate protection for irrigation workers, EPA is limiting the tasks that may be engaged in by time (a maximum of 8 hours during any 24-hour period), necessity, and economic impact. These measures will provide workers with adequate protection while allowing growers the needed flexibility to prevent significant economic losses

due to problems with their irrigation systems.

C. Two-Year Expiration Date

Under the proposal, this exception would have expired 24 months after the implementation date. Most commenters were opposed to an expiration date and stated that 2 years was not sufficient time to gather data concerning any documented increase in incidents. Several commenters were in favor of the 2-year expiration as a period to be used to monitor the need for further restriction if necessary.

EPA agrees with comments opposed to the 24-month expiration. The 2-year time period would not provide adequate time for EPA to evaluate the impact of the exception date. In general, changes in pesticide use practices do not occur suddenly, and there is often a lag time in reporting and analysis of incident data. Therefore, EPA expects it might be several years before data would be available to evaluate the impact of this exception. EPA, of course, may use the procedure in § 170.112(e)(5) to revoke the exception at any time that data become available indicating that such action is necessary.

D. Personal Protective Equipment (PPE)

The Agency was asked to consider establishing a generic PPE set. Since irrigation workers may work in several different treated areas, they could be required to comply with several different label requirements for PPE. EPA proposed a generic PPE set which would consist of coveralls, chemical resistant gloves, socks, and chemical resistant footwear. EPA proposed that the employer may choose to provide employees with PPE that either: (a) conforms with the label requirements for early-entry PPE; or (b) conforms with the generic PPE. The proposed alternative generic PPE requirement includes eyewear, if on the label.

Several commenters expressed concern that irrigators may be at risk of heat stress from performing strenuous tasks in coveralls. Several commenters maintained that bodily contact with treated surfaces would be limited to areas protected by gloves and boots. One commenter mentioned that the use of gloves would be impractical for certain tasks.

Some commenters stated that the complete PPE was necessary because it could not be assumed that exposure would be only to feet, lower legs, hands and forearms. It was mentioned that irrigators may not have considerable contact with foliage, but do have significant contact with contaminated soil and pipes. Several commenters

responded favorably to the option of wearing generic PPE, in lieu of the label requirements, because it would reduce confusion for irrigators entering multiple fields in a single day. One commenter opposed the use of generic PPE, in lieu of the label PPE, because irrigation workers will be exposed through incidental exposure, such as residues dripping from orchards, irrigation water, or wiping perspiration from the face. Even while wearing PPE, injuries have been reported.

EPA has concluded that rather than require eyewear as part of the generic PPE, the use of protective eyewear should be consistent with the early-entry PPE requirement on the labeling. EPA is not requiring respiratory equipment because the exception expressly prohibits workers from entering treated fields during the first 4 hours after application and until applicable ventilation criteria have been met, and until any label-specified inhalation exposure level has been reached.

While the terms of the exception require that the contact be limited to feet, lower legs, hands, and forearms, the Agency believes that incidental, unintended, or accidental exposure to other parts of the body, besides the lower legs, feet, forearms and hands, may be possible and thus, is requiring coveralls as part of the generic PPE. The WPS requires that PPE not be worn home and that it must be properly maintained by agricultural employers. The requirement for coveralls could decrease exposure risk to residues from long-sleeved shirts and long pants which could be worn home.

In response to concerns regarding heat stress from wearing PPE, EPA notes that the agriculture employer is required, under unit IV.7 of this document, to assure that no worker is allowed or directed to perform the early-entry activity without implementing, when appropriate, measures to prevent heat-related illness.

E. Time Allowed in the Treated Area

EPA proposed that the time in treated areas under the REI for each worker not exceed 8 hours in any 24-hour period.

Many comments recommended unlimited entry during the REI for irrigation. Several commenters favored the 8-hour limit in any 24-hour period and one commenter said it would be difficult and uncommon for an irrigator to exceed 8 hours in a treated area during even the longest work shift. One commenter indicated that pesticide-treated surfaces cannot be controlled and that PPE may not adequately protect for 8 hours. It was also suggested that

time in the treated area should be determined by the toxicity of the chemical, allowing up to 6 hours per 24-hour period.

EPA has designed this exception by balancing the benefits of giving employers the flexibility to perform irrigation tasks against the added risks resulting from increased exposure during early entry. In this case, one way to limit risk is to limit exposure to 8 hours, rather than to allow unlimited entry as commenters requested. Entry for up to 8 hours affords employers considerably more flexibility in using workers than a shorter period. EPA is retaining the 8 hours maximum time allowed within a 24-hour period. The Agency concludes that this is a sufficient amount of time to address most irrigation needs and, after considering this provision in combination with the other protections required under this exception, that the benefits of an 8-hour period outweigh the risk of exposure in that period.

F. Exclusion of Double-Notification Pesticides

Entry into areas treated with pesticides requiring double notification is not allowed under the terms of this exception. The "double-notification" provision relates to pesticides that are highly toxic, dermally irritating, or have other health effects that set them apart from other pesticides and requires growers to both post the treated area and orally notify workers of the application.

Several commenters opposing the exclusion of double-notification pesticides, asserted that the same tasks are necessary and believed the risks would be low since workers would have only "minimal contact with treated surfaces" and that PPE would provide adequate protection. Other alternatives proposed included: allowing entry to fields based on the height of the crop or on the nature of the task rather than the toxicity of the pesticide; and reducing the maximum time allowed in fields treated with double-notification pesticides.

Several commenters supported excluding double-notification pesticides and one commenter stated that the double-notification pesticides should also be excluded from the other exceptions. One commenter stated that category B or C carcinogens, identified as developmental or reproductive toxins or known to be sensitizers, and pesticides with the signal word DANGER should also be excluded from the exception. Another commenter expressed concern over the methodology of compiling the double-notification list and expressed concern

regarding other risky pesticide exposures, especially from the standpoint of eye exposure and chronic toxicity.

The Agency is convinced that allowing workers to enter a field treated with a double-notification pesticide before the expiration of the REI would pose an unreasonable risk. Incidental exposure to double-notification pesticides, such as brushing against a treated surface, more than with other pesticides, has the potential to cause an acute illness or a delayed effect. There are reports of acute poisonings which have occurred after short-term exposure to many of these highly-toxic pesticides. Thus, shortening the period allowed for early entry may still not provide adequate protection. EPA has data demonstrating that the majority of pesticides requiring double-notification are responsible for many reported incidents of worker poisonings. The Agency is prohibiting early entry during the REI to fields treated with pesticide products which require both the posting of treated areas and oral notification to workers (i.e. double-notification).

G. Notification Requirements to Workers

The exception proposed 10 posting requirements. Many of these requirements duplicated requirements of the WPS and one (the posting of the 2-year expiration date) is no longer relevant.

The Agency is requiring growers that use this exception to inform workers, either in writing or orally in language the worker understands, that: (1) The establishment is relying on the irrigation exception to allow workers to enter treated areas to complete irrigation tasks; (2) no entry is allowed for the first 4 hours following an application, and until applicable ventilation criteria have been met, and until any label-specified inhalation exposure level has been reached; and (3) the time in the treated area under a REI for any worker may not exceed 8 hours in any 24-hour period.

H. Poisoning Information

Several commenters supplied the Agency with poisoning incident data. Many poisoning incidents, while involving irrigators, appear to be accidents and would not be affected by this exception. Also, many of these pre-WPS incidents would constitute non-compliance with the federal WPS requirements if they had been in effect. These incidents have reinforced the Agency's conclusion about the potential for risk reduction by wearing PPE when entering treated fields before the REI expires.

Implementation of the WPS will reduce the number of pesticide-related incidents by requiring irrigators to wear PPE if entering before the REI expires and by not allowing any entry until the 4 hours after application and until inhalation/ventilation criteria have been met.

IV. Terms of the Exception

The terms of the exception are essentially the same as those proposed in the **Federal Register** of January 11, 1995 (60 FR 2830), with two minor differences; the final exception is not limited to 2 years and the 10 posting requirements have been changed to 3 notification requirements. It should be noted that because this exception allows tasks to be performed during the REI, all persons engaged in irrigation tasks under this exception must be trained.

The exception described in this document may be used unless early entry is expressly prohibited in product labeling. For example, some labels prohibit entry--including entry that would otherwise be permitted under the WPS and this exception--by any person other than trained and equipped handlers performing handling tasks for specified periods after the application.

Under the terms of this exception, a trained worker may enter a treated area during a REI to perform tasks related to operating, moving, or repairing irrigation or watering equipment, if the agricultural employer ensures that all of the following requirements are met:

1. The need for the task could not have been foreseen and cannot be delayed until after the expiration of the REI. A task that cannot be delayed is one that, if not performed before the REI expires, would cause significant economic loss, and there are no alternative practices which would prevent significant loss.

2. No hand labor activity is performed. (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, plant parts, or soil) that may contain pesticide residues.)

3. The worker's only contact with treated surfaces (including but not limited to soil, water, surfaces of plants, crops, and irrigation equipment) is minimal and is limited to feet, lower legs, hands, and forearms.

4. The PPE for early entry must be provided to the worker by the agricultural employer for all tasks. Such PPE shall either: (a) conform with the label requirements for early-entry PPE; or (b) consist of coveralls, chemical resistant gloves, socks, and chemical

resistant footwear, and eyewear (if eyewear is required for early-entry PPE by the product labeling). In either case, the PPE must conform to the standards set out in § 170.112(c)(4)(i) through (c)(4)(x).

5. The pesticide product does not have a statement in the pesticide product labeling requiring both the posting of treated areas and oral notification to workers (double notification), or a restriction prohibiting any person, other than an appropriately trained and equipped handler, from entering during the REI.

6. The time in treated areas under a REI for any worker does not exceed a maximum of 8 hours in any 24-hour period.

7. For all irrigation tasks, the requirements of § 170.112(c)(3)–(c)(9) are met. These are WPS requirements for all early-entry situations that involve contact with treated surfaces, and include:

i. A prohibition against entry during the first 4 hours, and until applicable ventilation criteria have been met, and until any label specified inhalation exposure level has been reached.

ii. Informing workers of safety information on the product labeling.

iii. Provision, proper management, and care of PPE.

iv. Heat-related illness prevention.

v. Requirements for decontamination facilities.

vi. Prohibition on taking PPE home.

8. The agricultural employer shall notify workers before entering a treated area, either orally or in writing, in a language the worker understands, that:

i. The establishment is relying on this exception to allow workers to enter treated areas to complete irrigation tasks.

ii. No entry is allowed for the first 4 hours following an application, and until applicable ventilation criteria have been met, and until any label-specified inhalation exposure level has been reached.

iii. The time in a treated area under a REI for any worker cannot exceed 8 hours in any 24-hour period.

EPA reserves the right to withdraw exceptions, in accordance with § 170.112(e)(6), if the Agency receives information or any other data that indicates the health risks posed by activities permitted under the exception are unreasonable, that the provisions of this exception are being abused, or that indicates the exception no longer has benefits that outweigh the risks.

V. Reevaluation of Irrigation Exception

The Agency is adopting this exception in order to provide the flexibility to the

agriculture sector to avoid significant economic losses while still providing agricultural workers protection under the WPS. As discussed more fully above, the Agency believes that any added risks associated with pesticide exposure of irrigation workers, from activities permitted by this action, will be limited by the specific conditions imposed in the irrigation exception. The Agency intends, over the next several growing seasons, to collect information to evaluate the effectiveness of this exception. In particular, EPA is interested in determining whether the conditions imposed by this action successfully protect workers against pesticide poisonings. EPA is also interested in better characterizing the circumstances in which this exception is being used and in understanding whether the exception addresses the needs of growers adequately. Finally, EPA would like to obtain information on the extent of compliance with the conditions in the irrigation exception and any practical problems with enforcement.

To obtain a better understanding of the implementation and impacts of this irrigation exception, EPA will work with USDA and States to gather relevant information. The Agency will hold public meetings in agricultural areas to provide those directly affected by the WPS--growers, enforcement staff, and agricultural workers--an opportunity to comment on these actions and the WPS rule in general. As appropriate, EPA may conduct surveys and review incident data to assess how the rules are affecting agriculture. The Agency invites any interested person who has concerns about the implementation of this action to send comments to the Agency at the address listed at the beginning of this Notice under FOR FURTHER INFORMATION CONTACT.

VI. List of Exceptions in 40 CFR 170.112

In a technical amendment published elsewhere in this issue of the **Federal Register**, EPA is amending § 170.112 of the WPS by adding to § 170.112(e)(7) a referencing of this administrative exception for irrigation tasks and its effective date. EPA will ensure that the regulated community is aware of the terms and conditions of the exception, and is able to locate this and future administrative exceptions. The technical amendment to § 170.112(e)(7) does not make any substantive changes in the WPS or in § 170.112.

VII. Public Docket

A record has been established for the WPS rulemaking and this administrative decision under docket number "OPP–

250098A" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

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.

The official record for the WPS rulemaking and this administrative decision, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

VIII. Consultations and Reviews

A. Statutory Reviews

As required by FIFRA section 25(a), this administrative decision was provided to the U.S. Department of Agriculture and to Congress for review. The FIFRA Scientific Advisory Panel waived its review.

B. OMB Review

This action was submitted to the Office of Management and Budget (OMB) for their informal review. Any comments or changes made during OMB's review have been documented in the public record.

C. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, EPA has assessed the effects of this administrative decision on State, local, and tribal governments, and the private sector. This action does not result in the expenditure of \$100 million or more by any State, local or tribal governments, or by anyone in the

private sector. In fact, this action actually involves a reduction in burden and overall cost.

In addition to the consultations prior to proposal, EPA has had several informal consultations regarding the proposed rule with some States through the EPA regional offices and at regularly scheduled State meetings. No significant issues or information were identified as a result of EPA's discussion with the States.

List of Subjects

Environmental protection, Administrative practice and procedure, Labeling, Occupational safety and health, Pesticides and pest.

Dated: April 24, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[OPP-00399A; FRL-4950-8]

Worker Protection Standard; Reduced Restricted Entry Intervals for Certain Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy Statement.

SUMMARY: EPA is issuing a final policy statement on "Reduced Restricted Entry Intervals for Certain Pesticides." EPA will allow registrants to reduce the interim Worker Protection Standard (WPS) restricted entry intervals (REIs) from 12 to 4 hours for certain low risk pesticides. EPA developed a two Tiered screening process to determine the eligibility of all Toxicity Category III and IV pesticides. The first Tier screened all Toxicity III and IV active ingredients against the low toxicity criteria. This policy statement contains a candidate list of those active ingredients that meet the low toxicity criteria, and may be eligible for reduced REIs. End use products containing active ingredients that appear on the list are to be evaluated by the criteria set in the second Tier of the screening process, described in this policy, to determine if the current REI may be reduced to 4 hours.

EFFECTIVE DATE: This policy will become effective May 3, 1995.

FOR FURTHER INFORMATION CONTACT: Judy Smith or Ameesha Mehta, Office of

Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 1121, Arlington, VA, (703) 305-7371, smith.judy@epamail.epa.gov or mehta.ameesha@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Agency is issuing a final policy statement that allows registrants to reduce the current interim Worker Protection Standard (WPS) restricted entry intervals (REIs) from 12 to 4 hours for certain low risk pesticides. This policy is one of a series of Agency actions since the publication of the final WPS in August 1992. In addition, EPA is also publishing final actions regarding: (1) Worker training requirements; (2) allowing early entry for irrigation activities; (3) allowing provisions for limited contact activities; and, (4) reduced requirements for crop advisors. Final determinations on the other four actions mentioned above are being published elsewhere in this issue of the **Federal Register**.

I. Summary of the Policy

EPA will permit registrants to reduce the current interim WPS REIs from 12 to 4 hours for pesticides which contain specific active ingredients and which meet certain additional criteria. Using the criteria described in Unit III of this policy statement, the Agency screened a total of 495 active ingredients and determined that over 100 active ingredients met the low toxicity criteria. As a result, end use products containing these active ingredients may be eligible for a reduced REI. Unit IV of this policy statement lists the candidate active ingredients that the Agency has determined meet the low toxicity criteria.

Registrants of end use products which are subject to WPS, and which contain only these active ingredients may apply the criteria in Unit VI of this policy statement to determine whether their end use product qualifies for the reduced REI. To revise labeling to reflect the reduced REI, the Agency will allow registrants to use a streamlined notification process which is described in this policy statement until December 31, 1995. After that date, registrants must use the existing registration label amendment process to submit an application for a reduced REI. Such applications would be evaluated and approved on the basis of the criteria provided in this policy statement.

If the Agency becomes aware of information and determines at any time that the reduced REI is not appropriate,

EPA will inform and, after opportunity for discussion, may direct the registrant to revise the REI on the label.

If any person believes that an active ingredient, not listed as a candidate for reduced REI in Unit IV of this policy statement, meets the low toxicity criteria of this policy statement, and that the end use products containing that active ingredient should be eligible for a reduced REI, the registrant should contact EPA at the address provided in the FOR FURTHER INFORMATION CONTACT unit.

II. Background

The 1992 WPS established an interim minimum REI of 12 hours for all end use pesticide products for agricultural uses. Longer interim REIs were established for more toxic products. Many commenters, during the promulgation of the rule, stated that it was difficult to determine when the sprays have dried or dusts have settled; thus, judgment was required to assess when such REI had expired. Other commenters requested the Agency establish minimum REIs to protect workers against possible unknown chronic or delayed health effects as a product-specific health effect evaluation would take the Agency a long time to conduct. Therefore, the 12-hour minimum REI was established for two reasons: (1) To replace previous REI which was the statement "when sprays have dried and dusts have settled"; and (2) to incorporate a margin of safety for unknown chronic or delayed health effects.

Since 1992, numerous registrants and pesticide users have asked EPA to consider reducing the minimum 12-hour REI for lower toxicity products that they believe do not need a 12-hour REI to protect workers. In response to these concerns, on January 11, 1995, the Agency published a proposal (60 FR 2848) for public comment. The January proposal contained 75 candidate active ingredients that were eligible for 4-hour REIs. Many comments stated that all Toxicity Category III's and IV's should be included on the list. EPA screened a total of 495 WPS in-scope active ingredients, and has added 39 more active ingredients to the candidate list.

III. Policy and Rationale for Low Toxicity Criteria

The 1992 WPS revised a 1974 regulation that expressed REIs in terms of the statement "when sprays have dried and dusts have settled." This phrasing was sufficiently vague to cause both enforcement problems and concerns about necessary margins of safety for chronic or delayed health