

**§ 170.204 Exemptions.**

The handlers listed in this section are exempt from the specified provisions of this subpart.

(a) *Owners of agricultural establishments.* (1) The owner of an agricultural establishment is not required to provide to himself or members of his immediate family who are performing handling tasks on their own agricultural establishment the protections of:

- (i) Section 170.210(b) and (c).
- (ii) Section 170.222.
- (iii) Section 170.230.
- (iv) Section 170.232.
- (v) Section 170.234.
- (vi) Section 170.235.
- (vii) Section 170.240(e) through (g).
- (viii) Section 170.250.
- (ix) Section 170.260.

(2) The owner of the agricultural establishment must provide the protections listed in paragraphs (a)(1)(i) through (ix) of this section to other handlers and other persons who are not members of his immediate family.

(b) *Crop advisors.* (1) Provided that the conditions of paragraph (b)(2) of this section are met, a person who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or a State or Tribal lead agency for pesticide enforcement, and persons performing crop advising tasks under such qualified crop advisor's direct supervision, are exempt from the provisions of:

- (i) Section 170.232.
- (ii) Section 170.240.
- (iii) Section 170.250.
- (iv) Section 170.260.

A person is under the direct supervision of a crop advisor when the crop advisor exerts the supervisory controls set out in paragraphs (b)(2)(iv) and (v) of this section. Direct supervision does not require that the crop advisor be physically present at all times, but the crop advisor must be readily accessible to the employees at all times.

(2) Conditions of exemption. (i) The certification or licensing program requires pesticide safety training that includes, at least, all the information in § 170.230(c)(4).

(ii) No entry into the treated area occurs until after application ends.

(iii) Applies only when performing crop advising tasks in the treated area.

(iv) The crop advisor must make specific determinations regarding the appropriate PPE, appropriate decontamination supplies, and how to conduct the tasks safely. The crop advisor must convey this information to each person under his direct supervision in a language that the person understands.

(v) Before entering a treated area, the certified or licensed crop advisor must inform, through an established practice of communication, each person under his direct supervision of the pesticide products and active ingredient(s) applied, method of application, time of application, the restricted entry interval, which tasks to undertake, and how to contact the crop advisor.

(c) *Grace period for persons performing crop advisor tasks who are not certified or licensed.* (1) Provided that the conditions of paragraph (c)(2) of this section are met, a person who is neither certified nor licensed as a crop advisor and any person performing crop advising tasks under his direct supervision is exempt until May 1, 1996, from the requirements of:

- (i) Section 170.230.
- (ii) Section 170.232.
- (iii) Section 170.240.
- (iv) Section 170.250.
- (v) Section 170.260.

(2) Conditions of exemption. (i) No entry into the treated area occurs until after application ends.

(ii) Applies only when the persons are performing crop advising tasks in the treated area.

(iii) The crop advisor must make specific determinations regarding the appropriate PPE, appropriate decontamination supplies, and how to conduct the tasks safely. The crop advisor must convey this information to each person under his direct supervision in a language that the person understands.

(iv) Before entering a treated area, the crop advisor must inform, through an established practice of communication, each person under his direct supervision of the pesticide products and active ingredient(s) applied, method of application, time of application, the restricted entry interval, which tasks to undertake, and how to contact the crop advisor.

7. In § 170.230, by revising the section title and paragraph (b) to read as follows:

**§ 170.230 Pesticide safety training for handlers.**

\* \* \* \* \*

(b) *Exceptions.* The following persons need not be trained under this section:

(1) A handler who is currently certified as an applicator of restricted-use pesticides under part 171 of this chapter.

(2) A handler who satisfies the training requirements of part 171 of this chapter.

(3) A handler who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing

by EPA or a State or Tribal lead agency for pesticide enforcement, provided that a requirement for such certification or licensing is pesticide safety training that includes all the information set out in § 170.230(c)(4).

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**40 CFR Part 170**

[OPP-250104; FRL-4950-9]

**Technical Amendment, Addition of Table of Exception Decisions to Early-Entry Prohibition, Worker Protection Standard; Final Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In the Notices section of this **Federal Register**, EPA is providing notice for two additional administrative exceptions to the general prohibition on early entry into pesticide treated areas contained in the Worker Protection Standard (WPS) issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The exceptions allow, under specific conditions, early entry for workers to perform irrigation and limited contact tasks. Both exceptions are in response to requests the Agency received from the agricultural community. To ensure that the regulated community is aware of these and future administrative exceptions to the early-entry prohibition, EPA is amending the WPS to add a new § 170.112(e)(7) that informs the regulated community where to locate **Federal Register** notices that set forth the terms and conditions of the administrative exceptions.

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

**FOR FURTHER INFORMATION CONTACT:** Sara Ager or Linda Strauss, 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 22202, Telephone: 703-305-7666, ager.sara@epamail.epa.gov or strauss.linda@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose**

EPA issued the WPS on August 21, 1992 (57 FR 38102) (40 CFR part 170). The WPS includes a prohibition (§ 170.112) against routine early entry into pesticide treated areas during restricted-entry interval (referred to as "early entry"). Section 170.112(e) of the

WPS provides a process for EPA to consider and grant administrative exceptions to this prohibition on early entry. In the Notices section of this **Federal Register**, EPA is granting the second and third such administrative exceptions. EPA is amending § 170.112 by adding two new paragraphs to paragraph (e)(7) identifying the **Federal Register** citations and effective dates for administrative exceptions granted under § 170.112(e).

The addition to paragraph (e)(7) is a technical amendment. It does not make any substantive changes in the WPS or § 170.112. EPA provided notice and an opportunity for comment on the proposed administrative exceptions. Detailed discussion of the public comments and the Agency's response are found in the Response to Public Comments in the docket.

**II. Regulatory Assessment Requirements**

*A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines "significant regulatory action" as action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the

economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 650(b)), EPA has determined that this technical amendment will not have a significant impact on a substantial number of small businesses since the technical amendment makes no substantive changes in the WPS.

*C. Paperwork Reduction Act*

This technical amendment contains no information collection requirements as defined in the Paperwork Reduction Act (44 U.S.C. 3502 et seq.)

**List of Subjects in 40 CFR Part 170**

Administrative practice and procedure, Labeling, Occupational

safety and health, Reporting and recordkeeping requirements.

Dated: April 24, 1995.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR chapter I, subchapter E, part 170 is amended as follows:

**PART 170—[AMENDED]**

1. The authority citation for part 170 continues to read as follows:

**Authority:** 7 U.S.C. 136w.

2. Section 170.112 is amended by adding paragraph (e)(7)(ii) and (iii) to read as follows:

**§ 170.112 Entry restrictions.**

*	*	*	*	*
(e) *	*	*		
(7) *	*	*		

(ii) Exception to perform irrigation tasks under specified conditions published in the **Federal Register** of May 3, 1995.

(iii) Exceptions to perform limited contact tasks under specified conditions published in the **Federal Register** of May 3, 1995.