

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.

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

definition of "limited contact task" will eliminate specific tasks that could result in greater exposure. EPA determined that hand labor tasks could not be performed with limited contact. 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. Allowing hand labor tasks would result in more frequent and longer periods of worker entry into the field. Generally, a worker performing hand labor is likely to have near-constant exposure to plant foliage, plant stems, and soil and therefore, higher exposure to pesticide residues. Therefore the Agency has limited the exception to non-hand labor tasks that are performed by workers that result in minimal contact with treated surfaces (including but not limited to soil, water, surfaces of plants, and equipment), and where such contact with treated surfaces is limited to the forearms, hands, lower legs, and feet.

To establish offsetting benefits to balance the potential risk to workers from early entry for "limited contact tasks," EPA is requiring that the limited contact task must be one that "cannot be delayed until after the expiration of the restricted entry interval" and, therefore, would constitute a significant economic loss if not undertaken. The Agency wishes to limit entry in the treated area during the REI and therefore is restricting entry to necessary tasks that cannot be delayed until the expiration of the REI.

C. Two Year Expiration Date

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

EPA believes that the two-year time period would not provide adequate time for EPA to evaluate the impact of the exception. 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. Therefore, EPA has decided to remove the 24-month expiration. EPA, of course, may use the procedure in § 170.112(e)(6) to revoke the exception at any time that data become

available indicating that such action is necessary.

D. Personal Protective Equipment (PPE)

The Agency has concluded that a generic set of PPE, consisting of coveralls, chemical-resistant gloves and footwear, and socks, should be required for this exception. Several comments requested modifications to this requirement, including removing the requirement for coveralls, substituting long sleeve shirts and long pants for coveralls to avoid the effects of heat stress, making PPE optional, and tailoring PPE requirements to the size of the plant.

Several comments disagreed with eliminating protective eyewear, given that workers will be in recently-treated areas and that residues on workers' hands and gloves can be transferred to the eyes. A number of comments stated that workers should always use label PPE.

EPA is convinced that the use of coveralls, chemical-resistant gloves and footwear, and socks is appropriate for limited contact tasks. Given the nature and range of tasks permitted under this exception EPA has concluded that coveralls are more appropriate than long-sleeved shirts and long pants.

While the terms of the exception require that contact be limited to feet, lower legs, hands, and forearms, EPA believes that incidental, unintended, or unanticipated 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 all PPE, which includes coveralls, be properly cleaned and maintained by agricultural employers. This PPE maintenance includes cleaning according to manufacturer's instructions. In the absence of these instructions, the PPE must be washed thoroughly in detergent and hot water. The PPE must also be inspected for leaks, holes, tears, or worn places before each day of use.

EPA has carefully considered comments supporting required eyewear and reviewed information in its possession that indicates a relatively low incidence of eye injuries to field workers by pesticides. EPA has concluded that rather than create a universal standard for eyewear to be used under the limited contact exception, the use of protective eyewear should be consistent with the early-entry PPE requirement on the labeling. Where eyewear is required on the label for early entry, it is also required for this exception.

In response to concerns regarding heat stress from wearing PPE, EPA has included in the exception a requirement that the agricultural employer assure that no worker is allowed or directed to perform the early-entry activity without implementing, when appropriate, measures to prevent heat-related illness. See Unit V.(7) of this document.

E. Time Allowed in the Treated Area During an REI

The Agency requested comments on the proposal to allow up to 3 hours allowable time to perform limited contact tasks during the REI, but for reasons outlined in this action has decided to allow no more than 8 hours of limited contact activity in a 24-hour period during an REI. Most of the comments requested an unlimited time be allowed for limited contact activities.

Some comments stated that the proposed time limit does not provide the needed flexibility in performing tasks, given the unpredictable and variable nature of farming and the necessity to perform certain tasks. Some comments stated further that without sufficient time, workers might feel pressured to work faster to complete the task, which could lead to safety risks, heat stress and exhaustion. In addition, several comments also stated that the proposed time limit would be difficult to enforce. Finally, several comments supported the proposed time limit for limited contact activities during the REI.

EPA has concluded that up to 8 hours in a 24-hour period in the treated area is sufficient time to perform almost all limited contact tasks. The Agency recognizes that, due to the vagaries of weather, pest populations, etc., unforeseen exigencies frequently occur in agriculture. These circumstances may necessitate more than the one-hour time limit currently allowed in the existing early entry exception. If limited contact activities can be completed in less than 8 hours, the exception does not authorize workers to remain in the treated areas to perform tasks that do not meet all of the conditions of the exception.

EPA concludes that early entry will not result in unreasonable risks to workers performing limited contact tasks, given that the allowable tasks are confined to those tasks that cannot be delayed until after the REI expires, that hand labor tasks are not permissible, and the exception does not apply where "double notification" pesticides have been applied. When workers do enter fields, exposure will be limited because of:

- (1) The definition of the tasks.

(2) Entry is prohibited for the first 4 hours after a pesticide application and until ventilation criteria and inhalation exposure levels are met.

(3) PPE must be provided and.

(4) The workers must be informed of the safety information on the product labeling.

The Agency recognizes that a time limit for limited contact tasks will be more difficult to enforce than universally prohibiting workers from entering the treated area under any conditions. EPA contends, however, that in this case, administrative ease must be balanced against the agricultural industry's need to cope with critical needs.

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 for crops treated with these pesticides; they said they 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 on the toxicity of the pesticide, and reducing the maximum time allowed in fields treated with double notification pesticides.

Another commenter stated that other hazardous pesticides as well as ones posing chronic risk have not been subjected to the double notification requirement and are, therefore, still included under this exception.

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 and other highly toxic 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).

EPA acknowledges the concern raised by commenters that exclusion of double notification pesticides may not guarantee that all hazardous chemicals are excluded from use under this exception. EPA believes it has excluded a group of pesticides known to be responsible for many poisoning incidents because of their acute toxicity. The Agency believes that worker exposure to other pesticides has been addressed by the stringent terms of this exception.

IV. Definitions and Examples

A. Definitions

This exception defines a "limited contact task" as follows:

A limited contact task is a non-hand labor task performed by workers that results in minimal contact with treated surfaces (including but not limited to soil, water, surfaces of plants, and equipment), and where such contact with treated surfaces is limited to the forearms, hands, lower legs, and feet.

This exception specifically prohibits hand labor activity, as defined by the WPS. The WPS defines "hand labor" as follows:

Any agricultural activity performed by hand or with hand tools that causes a worker to have significant contact with surfaces (such as plants, plant parts, or soil) that may contain pesticide residues.

B. Examples

Examples of possible limited contact tasks that might qualify for the exception include, but are not limited to: The operation and repair of weather monitoring and frost protection equipment; the repair of greenhouse heating, air conditioning, and ventilation equipment; the repair of non-application field equipment; the maintenance and moving of beehives.

Examples of hand labor activity that is specifically prohibited include, but are not limited to: Harvesting; detasseling; thinning; weeding; caning; girdling; topping; planting; sucker removal; pruning; disbudding; roguing; packing produce into containers in the field.

Hand labor does not include operating, moving, or repairing

irrigation or watering equipment or performing the tasks of crop advisors. Hand labor tasks involve substantial contact and have a potential for high exposure.

V. Terms of the Exception

The exception described in this Notice 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. It should be noted that because this exception allows tasks to be performed during the REI, all persons engaged in irrigation tasks permitted under this exception must be trained.

Under this exception, a trained worker may enter a treated area during a restricted entry interval to perform a limited contact task if the agricultural employer ensures that 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 tasks 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), is minimal and is limited to feet, lower legs, hands, and forearms.

(4) The personal protective equipment for early entry must be provided to the worker by the agricultural employer for all tasks. Such personal protective equipment 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 restricted entry interval.

(6) The time in treated areas under a restricted entry interval for any worker does not exceed a maximum of 8 hours in any 24-hour period.

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

(a) 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.

(b) Informing workers of safety information on the product labeling.

(c) Provision, proper management, and care of personal protective equipment.

(d) Heat-related illness prevention.

(e) Requirements for decontamination facilities.

(f) Prohibition on taking personal protective equipment 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:

(a) The establishment is relying on this exception to allow workers to enter treated areas to complete limited contact tasks.

(b) 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.

(c) The time in a treated area under a restricted-entry interval 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.

VI. Reevaluation of the Limited Contact Exception

The Agency is adopting this exception in order to provide the flexibility to the agriculture sector to avoid significant economic losses while providing protections for agricultural workers under the WPS. As discussed more fully above, the Agency believes that any added risks associated with pesticide

exposure of workers from activities permitted by this action will be limited by the specific conditions imposed in the 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 limited contact 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 exception and any practical problems with enforcement.

To obtain a better understanding of the implementation and impacts of this limited contact 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 document under the ADDRESSES section.

VII. List of Exceptions in 40 CFR 170.112

EPA will be amending § 170.112 of the WPS by adding to § 170.112 new paragraph (e)(7)(iii) referencing this administrative exception for "limited contact" 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. This amendment to paragraph (e) of § 170.112 will be a technical amendment. It does not make any substantive changes in the WPS or in § 170.112.

VIII. Public Docket

A record has been established for the rulemaking and this administrative decision under docket number "OPP-250101A" (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.

IX. 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 for review and will be provided to Congress. 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 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.

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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.