

§ 170.112 Entry restrictions.

(a) *General restrictions.* (1) After the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired, except as provided in this section.

(2) Entry-restricted areas in greenhouses are specified in column D in table 2 under § 170.110(c)(4).

(3) When two or more pesticides are applied at the same time, the restricted-entry interval shall be the longest of the applicable intervals.

(4) The agricultural employer shall assure that any worker who enters a treated area under a restricted-entry interval as permitted by paragraphs (c), (d), and (e) of this section uses the personal protective equipment specified in the product labeling for early-entry workers and follows any other requirements on the pesticide labeling regarding early entry.

(b) *Exception for activities with no contact.* A worker may enter a treated area during a restricted-entry interval if the agricultural employer assures that both of the following are met:

(1) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants; and

(2) No such entry is allowed until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by § 170.110(c)(3) or in the labeling have been met.

(c) *Exception for short-term activities.* A worker may enter a treated area during a restricted-entry interval for short-term activities if the agricultural employer assures that the following requirements are met:

(1) No hand labor activity is performed.

(2) The time in treated areas under a restricted-entry interval for any worker does not exceed 1 hour in any 24-hour period.

(3) No such entry is allowed for the first 4 hours following the end of the application, and no such entry is al-

lowed thereafter until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by § 170.110(c)(3) or in the labeling have been met.

(4) The personal protective equipment specified on the product labeling for early entry is provided to the worker. Such personal protective equipment shall conform to the following standards:

(i) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(ii) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(iii) When “chemical-resistant” personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(iv) When “waterproof” personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(v) When a “chemical-resistant suit” is specified by the product labeling, it shall be a loose-fitting, one- or two-piece, chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(vi) When “coveralls” are specified by the product labeling, they shall be a loose-fitting, one- or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over a layer of clothing. If a

chemical-resistant suit is substituted for coveralls, it need not be worn over a layer of clothing.

(vii)(A) Gloves shall be of the type specified on the pesticide product labeling. Gloves made of leather, cotton, or other absorbent materials must not be worn for early-entry activities, unless gloves made of these materials are listed as acceptable for such use on the product labeling. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, leather gloves may be worn on top of chemical-resistant gloves. However, once leather gloves have been worn for this use, they shall not be worn thereafter for any other purpose, and they shall only be worn over chemical-resistant gloves.

(B) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with non-separable absorbent lining materials are prohibited.

(C) If used, separable glove liners must be discarded immediately after a total of no more than 10 hours of use or within 24 hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners shall not be reused. Contaminated liners must be disposed of in accordance with any Federal, State, or local regulations.

(viii) When “chemical-resistant footwear” is specified by the product labeling, it shall be one of the following types of footwear: chemical-resistant shoes, chemical-resistant boots, or chemical-resistant shoe coverings worn over shoes or boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable for workers, then leather boots may be worn in such terrain.

(ix) When “protective eyewear” is specified by the product labeling, it shall be one of the following types of eyewear: goggles; face shield; safety glasses with front, brow, and temple protection; or a full-face respirator.

(x) When “chemical-resistant headgear” is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(5) The agricultural employer shall assure that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use.

(6) The agricultural employer shall assure that:

(i) Workers wear the personal protective equipment correctly for its intended purpose and use personal protective equipment according to manufacturer’s instructions.

(ii) Before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(iii) Personal protective equipment that cannot be cleaned properly is disposed of in accordance with any applicable Federal, State, and local regulations.

(iv) All personal protective equipment is cleaned according to manufacturer’s instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(v) Before being stored, all clean personal protective equipment is dried thoroughly or is put in a well-ventilated place to dry.

(vi) Personal protective equipment contaminated with pesticides is kept separately and washed separately from any other clothing or laundry.

(vii) Any person who cleans or launders personal protective equipment is informed that such equipment may be contaminated with pesticides, of the

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potentially harmful effects of exposure to pesticides, and of the correct way(s) to handle and clean personal protective equipment and to protect themselves when handling equipment contaminated with pesticides.

(viii) All clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(ix) Each worker is instructed how to put on, use, and remove the personal protective equipment and is informed about the importance of washing thoroughly after removing personal protective equipment.

(x) Each worker is instructed in the prevention, recognition, and first aid treatment of heat-related illness.

(xi) Workers have a clean place(s) away from pesticide-storage and pesticide-use areas for storing personal clothing not in use; putting on personal protective equipment at the start of any exposure period; and removing personal protective equipment at the end of any exposure period.

(7) When personal protective equipment is required by the labeling of any pesticide for early entry, the agricultural employer shall assure that no worker is allowed or directed to perform the early-entry activity without implementing, when appropriate, measures to prevent heat-related illness.

(8) During any early-entry activity, the agricultural employer shall provide a decontamination site in accordance with § 170.150.

(9) The agricultural employer shall not allow or direct any worker to wear home or to take home personal protective equipment contaminated with pesticides.

(d) *Exception for an agricultural emergency.* (1) An “agricultural emergency” means a sudden occurrence or set of circumstances which the agricultural employer could not have anticipated and over which the agricultural employer has no control, and which requires entry into a treated area during a restricted-entry interval, when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected based on the

experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement cannot be considered in determining the loss.

(2) A worker may enter a treated area under a restricted-entry interval in an agricultural emergency to perform tasks, including hand labor tasks, necessary to mitigate the effects of the agricultural emergency, if the agricultural employer assures that all the following criteria are met:

(i) A State, Tribal, or Federal Agency having jurisdiction declares the existence of circumstances that could cause an agricultural emergency on that agricultural establishment.

(ii) The agricultural employer determines the agricultural establishment is subject to the circumstances declared under paragraph (d)(2)(i) of this section that result in an agricultural emergency meeting the criteria of paragraph (d)(1) of this section.

(iii) The requirements of paragraphs (c) (3) through (9) of this section are met.

(e) *Exception requiring Agency approval.* The Agency may, in accordance with paragraphs (e) (1) through (3) of this section, grant an exception from the requirements of this section. An exception may be withdrawn in accordance with paragraph (e)(6) of this section.

(1) *Exception requiring agency approval.* A request for an exception must be submitted to the Office of Pesticide Programs’ Document Processing Desk at the appropriate address as set forth in 40 CFR 150.17(a) or (b) and must be accompanied by two copies of the following information:

(i) The name, address, and telephone number of the submitter.

(ii) The time period for which the exception is requested.

(iii) A description of the crop(s) and specific crop production task(s) for which the exception is requested. Such a description must include an explanation as to the necessity of applying pesticides of a type and at a frequency such that the restricted-entry interval would interfere with necessary and time-sensitive hand labor tasks for the

period for which the exception is sought.

(iv) A description of the geographic area for which the exception is requested. If the exception request is for a limited geographic area, the explanation must include a description as to why the circumstances of exposure or economic impact resulting from the prohibition of routine hand labor tasks during the restricted-entry interval are unique to the geographic area named in the exception.

(v) An explanation as to why, for each requested crop-task combination, alternative practices would not be technically or financially viable. Such alternative practices might include: rescheduling the pesticide application or hand labor activity; using a non-chemical pest control alternative; using an alternative to the hand labor tasks, such as machine cultivation; or substituting a pesticide with a shorter restricted-entry interval. This information should include estimates or data on per acre revenue and cost of production for the crop and area for which the exception is requested. These estimates or data should include: the situation prior to implementation of this final rule, the situation after implementation of this final rule if the exception is not granted, the situation after implementation of this final rule if the exception is granted, and specific information on individual factors which cause differences in revenues and costs among the three situations.

(vi) A description or documentation of the safety and feasibility of such an exception, including, but not limited to, the feasibility of performing the necessary hand labor activity while wearing the personal protective equipment required for early entry for the pesticide(s) expected to be applied, the means of mitigating heat-related illness concerns, the period of time required daily per worker to perform the hand labor activity, any suggested methods of reducing the worker's exposure, and any other mitigating factors, such as the availability of running water for routine and emergency decontamination and mechanical devices that would reduce the workers' contact with the treated surfaces. The information should include the costs associ-

ated with early-entry, such as decontamination facilities, special information and training for the workers, heat stress avoidance procedures, and provision, inspection, cleaning, and maintenance of personal protective equipment. EPA will not grant exceptions where the costs of early entry equal or exceed the expected loss in value of crop yield or quality.

(2) *Notice of receipt.* (i) When a request for an exception is submitted to the Agency along with all of the information required in paragraph (e)(1) of this section, the Agency shall issue a notice in the FEDERAL REGISTER stating that an exception is being considered, describing the nature of the exception, and allowing at least 30 days for interested parties to comment.

(ii) If a request for an exception is submitted to the Agency without all of the information required in paragraph (e)(1) of this section, the Agency shall return the request to the submitter.

(3) *Exception decision.* EPA will publish in the FEDERAL REGISTER its decision whether to grant the request for exception. EPA will base its decision on whether the benefits of the exception outweigh the costs, including the value of the health risks attributable to the exception. If the exception is granted, the notice will state the nature of and reasons for the exception.

(4) *Presumptive denial.* (i) Except as provided in paragraph (e)(4)(ii) of this section, persons requesting an exception may assume that the exception has been denied if EPA has not issued its decision whether to grant the exception within 9 months from the comment-closure date specified in the FEDERAL REGISTER notice in which the Agency announced, in accordance with paragraph (e)(2) of this section, that it would consider the exception.

(ii) Persons requesting an exception may not assume that the request has been denied as provided by paragraph (e)(4)(i) of this section if the Agency has taken action to extend its review period for a specified time interval due to the complexity of the exception request or to the number of exception requests concurrently under Agency review. EPA shall state the reason(s) for the delay in issuing a decision on the exception request. A notice of such an

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action may be published in the FEDERAL REGISTER or persons who requested the exception may be directly notified of the action.

(5) *Agricultural employer duties.* When a worker enters a treated area during a restricted-entry interval under an exception granted under paragraph (e) of this section, the agricultural employer shall assure that the requirements of paragraphs (c) (3) through (9) of this section are met, unless the notice granting the exception specifically indicates otherwise.

(6) *Withdrawing an exception.* An exception may be withdrawn by the Agency at any time if the Agency receives poisoning information or other data that indicate that the health risks imposed by this early-entry exception are unacceptable or if the Agency receives other information that indicates that the exception is no longer necessary or prudent. If the Agency determines that an exception should be withdrawn, it will publish a notice in the FEDERAL REGISTER, stating the basis for its determination. Affected parties would then have 30 days to request a hearing on the Agency's determination. The exception, however, would be discontinued as of the date specified by EPA in the notice, which may include any of the 30-day period and the time required for any subsequent hearing process. Thereafter the Agency will decide whether to withdraw the exception and will publish a notice in the FEDERAL REGISTER stating its decision.

(7) *List of exceptions granted by EPA.* The following administrative exceptions from the requirements of this section have been granted by EPA. Each exception listed in paragraph (e)(7) of this section contains a reference to the FEDERAL REGISTER notice in which EPA has granted the exception and the effective dates of the exception. The terms and conditions of the exception appear in the referenced FEDERAL REGISTER notice.

(i) Exception for hand labor to harvest greenhouse-grown cut roses published in the FEDERAL REGISTER of June 10, 1994, effective from June 10, 1994, to June 10, 1996.

(ii) Exception to perform irrigation tasks under specified conditions pub-

lished 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.

(iv) Exception for hand labor to harvest greenhouse-grown roses under specified conditions published in the FEDERAL REGISTER of October 3, 1997, effective December 18, 1996 to October 4, 1999.

[57 FR 38151, Aug. 21, 1992, as amended at 59 FR 30264, June 10, 1994; 60 FR 21954, May 3, 1995; 62 FR 52003, Oct. 3, 1997; 69 FR 53346, Sept. 1, 2004; 71 FR 35546, June 21, 2006]

§ 170.120 Notice of applications.

(a) *Notification to workers of pesticide applications in greenhouses.* The agricultural employer shall notify workers of any pesticide application in the greenhouse in accordance with this paragraph.

(1) All pesticide applications shall be posted in accordance with paragraph (c) of this section.

(2) If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer shall also provide oral notification of the application to the worker in accordance with paragraph (d) of this section.

(3) Notice need not be given to a worker if the agricultural employer can assure that one of the following is met:

(i) From the start of the application until the end of the application and during any restricted-entry interval, the worker will not enter, work in, remain in, or pass through the greenhouse; or

(ii) The worker applied (or supervised the application of) the pesticide for which the notice is intended and is aware of all information required by paragraphs (d)(1) through (3) of this section.

(b) *Notification to workers on farms, in nurseries, or in forests of pesticide applications.* The agricultural employer shall notify workers of any pesticide application on the farm or in the nursery or forest in accordance with this paragraph.