

§ 170.104

40 CFR Ch. I (7-1-04 Edition)

§ 170.104 Exemptions.

The workers 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 tasks related to the production of agricultural plants on their own agricultural establishment the protections of:

(i) Section 170.112(c)(5) through (9).

(ii) Section 170.112(c)(5) through (9) as referenced in §§ 170.112(d)(2)(iii) and 170.112(e).

(iii) Section 170.120.

(iv) Section 170.122.

(v) Section 170.130.

(vi) Section 170.135.

(vii) Section 170.150.

(viii) Section 170.160.

(2) The owner of the agricultural establishment must provide the protections listed in paragraph (a)(1)(i) through (viii) of this section to other workers 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 170.150.

(ii) Section 170.160.

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

(iii) The crop advisor must make specific determinations regarding the ap-

propriate 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 certified or licensed crop advisor must inform, through an established practice of communication, each person under his direct supervision of the pesticide product 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 170.130.

(ii) Section 170.150.

(iii) Section 170.160.

(2) Conditions of exemption. (i) Applies only when the persons are performing crop advising tasks in the treated area.

(ii) 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.

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

[60 FR 21952, May 3, 1995]

§ 170.110 Restrictions associated with pesticide applications.

(a) *Farms and forests.* During the application of any pesticide on a farm or in a forest, the agricultural employer shall not allow or direct any person,

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other than an appropriately trained and equipped handler, to enter or to remain in the treated area.

(b) *Nurseries.* In a nursery, during any pesticide application described in column A of Table 1 of this paragraph, the agricultural employer shall not allow or direct any person, other than an ap-

propriately trained and equipped handler, to enter or to remain in the area specified in column B of Table 1 of this paragraph. After the application is completed, until the end of any restricted-entry interval, the entry-restricted area is the treated area.

TABLE 1—ENTRY-RESTRICTED AREAS IN NURSERIES DURING PESTICIDE APPLICATIONS

A. During Application of a Pesticide:	B. Workers are Prohibited in:
(1)(a) Applied: (i) Aerially, or (ii) In an upward direction, or (iii) Using a spray pressure greater than 150 psi, or (b) Applied as a: (i) Fumigant, or (ii) Smoke, or (iii) Mist, or (iv) Fog, or (v) Aerosol.	Treated area plus 100 feet in all directions on the nursery
(2)(a) Applied downward using: (i) A height of greater than 12 inches from the planting medium, or (ii) A fine spray, or (iii) A spray pressure greater than 40 psi and less than 150 psi. (b) Not as in 1 or 2(a) above but for which a respiratory protection device is required for application by the product labeling.	Treated area plus 25 feet in all directions on the nursery
(3) Applied otherwise.	Treated area

(c) *Greenhouses.* (1) When a pesticide application described in column A of Table 2 under paragraph (c)(4) of this section takes place in a greenhouse, the agricultural employer shall not allow or direct any person, other than an appropriately trained and equipped handler, to enter or to remain in the area specified in column B of Table 2 until the time specified in column C of Table 2 has expired.

(2) After the time specified in column C of Table 2 under paragraph (c)(4) of this section has expired, until the expiration of any restricted-entry interval, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area as specified in column D of Table 2 under paragraph (c)(4) of this section, except as provided in §170.112.

(3) When column C of Table 2 under paragraph (c)(4) of this section specifies that ventilation criteria must be met, ventilation shall continue until

the air concentration is measured to be equal to or less than the inhalation exposure level the labeling requires to be achieved. If no inhalation exposure level is listed on the labeling, ventilation shall continue until after:

- (i) Ten air exchanges are completed; or
- (ii) Two hours of ventilation using fans or other mechanical ventilating systems; or
- (iii) Four hours of ventilation using vents, windows or other passive ventilation; or
- (iv) Eleven hours with no ventilation followed by 1 hour of mechanical ventilation; or
- (v) Eleven hours with no ventilation followed by 2 hours of passive ventilation; or
- (vi) Twenty-four hours with no ventilation.

(4) The following Table 2 applies to paragraphs (c) (1), (2), and (3) of this section.

TABLE 2—GREENHOUSE ENTRY RESTRICTIONS ASSOCIATED WITH PESTICIDE APPLICATIONS

A. When a Pesticide is Applied:	B. Workers are Prohibited in:	C. Until:	D. After the Expiration of Time in Column C Until the Restricted-Entry Interval Expires, the Entry-Restricted Area is:
(1) As a fumigant	Entire greenhouse plus any adjacent structure that cannot be sealed off from the treated area	The ventilation criteria of paragraph (c)(3) of this section are met	No entry restrictions after criteria in column C are met
(2) As a (i) Smoke, or (ii) Mist, or (iii) Fog, or (iv) Aerosol	Entire enclosed area	The ventilation criteria of paragraph (c)(3) of this section are met	Entire enclosed area is the treated area
(3) Not in 1 or 2 above, and for which a respiratory protection device is required for application by the product labeling	Entire enclosed area	The ventilation criteria of paragraph (c)(3) of this section are met	Treated area
(4) Not in 1, 2, or 3 above, and: (i) From a height of greater than 12 in. from the planting medium, or (ii) As a fine spray, or (iii) Using a spray pressure greater than 40 psi	Treated area plus 25 feet in all directions in the enclosed area	Application is complete	Treated area
(5) Otherwise	Treated area	Application is complete	Treated area

§ 170.112 Entry restrictions.

(a) *General restrictions.* (1) After the application of any pesticide on an 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.