

WAC 16-233-306 Exceptions for entry by workers during restricted-entry intervals—40 C.F.R., § 170.603. An agricultural employer may direct workers to enter treated areas where a restricted-entry interval is in effect to perform certain activities as provided in this section, provided that the agricultural employer ensures all of the applicable conditions of this section and WAC 16-233-311 are met.

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

(a) 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. This exception does not allow workers to perform any activities that involve contact with treated surfaces even if workers are wearing personal protective equipment.

(b) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is worn according to requirements in WAC 296-307-594, Part Y-5 Respirators.

(2) *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 ensures that all of the following requirements are met:

(a) No hand labor activity is performed.

(b) The time in treated areas where a restricted-entry interval is in effect does not exceed one hour in any twenty-four-hour period for any worker.

(c) No such entry is allowed during the first four hours after the application ends.

(d) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is worn according to requirements in WAC 296-307-594, Part Y-5 Respirators.

(3) *Exception for an agricultural emergency.*

(a) An agricultural emergency means a sudden occurrence or set of circumstances that the agricultural employer could not have anticipated and over which the agricultural employer has no control, that requires entry into a treated area during a restricted-entry interval, and 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. Losses resulting from mismanagement cannot be included when determining whether a loss is substantial.

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

(i) The Washington state department of agriculture declares an agricultural emergency that applies to the treated area, or agricultural employer has determined that the circumstances within the treated area are the same as circumstances the Washington state department of agriculture has previously determined would constitute an agricultural emergency.

(ii) The agricultural employer determines that the agricultural establishment is subject to the circumstances that result in an agricultural emergency meeting the criteria of (a) of this subsection.

(iii) If the labeling of any pesticide product applied to the treated area requires workers to be notified of the location of treated areas by both posting and oral notification, then the agricultural employer must ensure that no individual worker spends more than four hours out of any twenty-four-hour period in treated areas where such a restricted-entry interval is in effect.

(iv) No such entry is allowed during the first four hours after the application ends.

(v) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is worn according to requirements in WAC 296-307-594, Part Y-5 Respirators.

(vi) A decontamination site has been provided in accordance with WISHA regulations.

(4) *Exceptions for limited contact and irrigation activities.* A worker may enter a treated area during a restricted-entry interval for limited contact or irrigation activities, if the agricultural employer ensures that all of the following requirements are met:

(a) No hand labor activity is performed.

(b) No worker is allowed in the treated area for more than eight hours in a twenty-four-hour period.

(c) No such entry is allowed during the first four hours after the application ends.

(d) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is worn according to requirements in WAC 296-307-594, Part Y-5 Respirators.

(e) The task is one that, if not performed before the restricted-entry interval expires, would cause substantial economic loss, and there are no alternative tasks that would prevent substantial loss.

(f) With the exception of irrigation tasks, the need for the task could not have been foreseen.

(g) The worker has no contact with pesticide-treated surfaces other than minimal contact with feet, lower legs, hands, and forearms.

(h) The labeling of the pesticide product that was applied does not require that workers be notified of the location of treated areas by both posting and oral notification.

[Statutory Authority: RCW 15.58.040 and 17.21.030. WSR 20-21-029, § 16-233-306, filed 10/12/20, effective 11/12/20. Statutory Authority: RCW 15.58.040, 17.21.030 and chapter 34.05 RCW. WSR 18-01-054, § 16-233-306, filed 12/13/17, effective 1/13/18.]