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August 18, 2014

OPP Docket
Environmental Protection Agency Docket Center (EPA/DC)
Mail code: 28221T
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Regarding the Proposed Rule for Revisions to Agricultural Worker Protection Standards

DOCKET ID: EPA-HQ-OPP-2011-0184

The Georgia Cotton Commission (GCC) is a producer funded organization representing the cotton producers of Georgia. Georgia is the second largest cotton growing state with a \$1.3 billion farm gate value and a total economic contribution of \$2.5 billion to the economy of Georgia. The Georgia cotton industry also accounts for over 15,000 jobs in our state. Agriculture is the largest industry in Georgia accounting for over 375,000 jobs and has a total economic impact of over \$76 billion to Georgia's economy.

GCC appreciates the opportunity to comment regarding the Environmental Protection Agency's (EPA) Proposed Rule regarding Agricultural Worker Protection Standards. Given the lengthy nature of the Proposed Rule, we appreciate EPA's consideration for the agricultural community in extending the comment period deadline.

After reviewing the proposed revisions to the Agricultural Worker Protection Standards, we have several issues we would like to call to the EPA's attention. To address these issues, GCC is endorsing the comments submitted by the National Cotton Council (NCC). NCC's comments are attached to this letter and we welcome further discussion by the EPA regarding the Proposed Rule to the Agricultural Worker Protection Standards.

Sincerely,

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Chairman
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Re: Docket No. EPA-HQ-OPP-2011-0184: Agricultural Worker Protection Standard Revisions; Proposed Rule

The National Cotton Council (NCC) appreciates the opportunity to submit comments on the U.S. Environmental Protection Agency (EPA)'s proposed revisions to the Agricultural Worker Protection Standard (WPS).

The NCC is the central organization of the U.S. cotton industry representing producers, ginners, warehousemen, merchants, cooperatives, textile manufacturers, and cottonseed processors and merchandisers in 17 states stretching from California to the Carolinas. The NCC represents producers who historically cultivate between 10 and 14 million acres of cotton. Annual cotton production, averaging approximately 20 million 480-lb bales, is valued at more than \$5 billion at the farm gate. While a majority of the industry is concentrated in the 17 cotton-producing states, the down-stream manufacturers of cotton apparel and home-furnishings are located in virtually every state. The industry and its suppliers, together with the cotton product manufacturers, account for more than 230,000 jobs in the U.S. In addition to the cotton fiber, cottonseed products are used for livestock feed and cotton-seed oil is used for food products ranging from margarine to salad dressing. Taken collectively, the annual economic activity generated by cotton and its products in the U.S. economy is estimated to be in excess of \$120 billion.

General Comments

The NCC's producer members have a high awareness and concern for the safety and well-being of the workers that they employ on their farms – many of whom are neighbors and family members. We would support cost effective protocols if quantifiable benefits can be demonstrated. However, the NCC believes that EPA has failed to demonstrate benefits that outweigh the additional costs to farmers.

The NCC believes that EPA has significantly underestimated the costs to farmers that these additional regulations will impose. For example, EPA estimates a cost of \$5/worker/year. The wages alone for a four-hour training session – even at the current federal minimum wage – would be \$29/worker and that does not include transportation or fees for the training. Additional costs to farmers would include signs and postings, recordkeeping, and additional trips for sign placement and maintenance.

In its benefits analyses, EPA uses acute exposures to estimate avoided costs due to medical fees and lost productivity. NCC believes that this methodology is sound; acute symptoms are observable and quantifiable. However, the Agency makes the assumption that only 25% of acute pesticide incidents are reported and, then, adjusts the estimate accordingly to come up with a number of about \$11.4 million in benefits. EPA should provide additional information about the assumptions which led to this conclusion.

Furthermore, it does not appear that EPA took into consideration the fact that U.S. production agriculture currently uses crop protectant products which have a significantly lower risk than those used 20 years ago. Also, the widespread planting of Bt cotton has dramatically decreased the need for insecticide treatments. Insecticide applications have been reduced from an average of 10-12/season to 0-3/season in cotton. Finally, the Agency does not mention improved application methods such as precision applications and drift reduction technologies which reduce worker exposures.

The benefits of reduced acute incidences are far less than the anticipated costs. In order to fill the gap, EPA also considered the benefits of reducing chronic effects of pesticide exposure. Chronic effects are much more difficult to assess and the scientific literature is not conclusive about chronic effects of pesticide exposure. Correlation studies between pesticide exposure and disease are unreliable in that they cannot account for other factors which can cause disease such as lifestyle, diet, and genetics. In the proposed rule, the agency even states that “EPA is not able to quantify the benefits expected to accrue from proposed WPS changes that would reduce chronic exposure to pesticides.” Yet, despite this acknowledgement, the Agency goes on to estimate that, if just 53 cases of the six selected diseases could be avoided through reduced pesticide exposures, the benefits would be sufficient to bridge the gap between the quantified benefits from reducing acute incidences and the \$62.1-72.9 million cost of the proposed rule. The gap between reduced acute incidences and estimated costs is \$48-67 million. Using EPA’s number of 53 cases, this estimate would amount to \$0.91-1.26 million/case/year. NCC does not believe that an estimate of \$1 million or more for medical costs and lost wages is realistic.

Therefore, the NCC has concluded that the cost/benefit analysis that EPA presents for this rulemaking is questionable at best. The promulgation of regulations without sound benefits is not prudent policy. The NCC urges EPA to refrain from proceeding with this rulemaking unless

a more certain cost/benefit analysis can be developed. Should EPA decide to proceed with the rulemaking despite these noted flaws, the NCC offers the following comments on the specifics of the proposed rule.

Specific Comments

Unit VII. Training for Workers and Handlers

A. Shortening Retraining Interval for Workers and Handlers

In this section, the Agency proposes to change the training interval frequency to an annual basis rather than the current five year frequency. The Agency has estimated the cost to be \$8.7 million per year. The Agency acknowledges that quantifying the benefits is more difficult, but argues that “based on information and expert views described in this section, it is reasonable to expect that more frequent training would lead to better retention of information by workers and handlers, ultimately resulting in fewer incidents of pesticide exposure and illness in workers and handlers, reduced take-home exposure, and better protection of children.” However, the NCC would point out that the Agency is concurrently proposing to add to the topics covered in training, particularly with respect to reducing potential for take-home exposure and better protection of children. The Agency’s proposed change to the frequency seems to be based on a 2007 report stating workers requested annual training on pesticide safety and research; the difficulty in verifying worker training; the reported short worker turn-over rate; and, the Agency’s belief that more frequent repetition of the protective principles on a more frequent basis will ensure retention of the information. The Agency cites research that shows that adults remember only about 10% of what they hear and 50% of what they see and hear, but does not demonstrate that an increase of training frequency from 5 to 1 year improves retention and understanding above current practices. The NCC is concerned that the Agency’s proposed change carries significant costs without evidence to support a benefit.

The NCC respectfully requests that the Agency consider repetition within the training program. The goal would be to maximize retention during the first time of training in order to ensure workers understand protection principles prior to engaging in their job duties rather than improving their understanding later. It is reasonable to provide follow-up training as a “refresher” in order to reinforce previously learned information, but we do not believe that a “refresher” has to be as detailed or lengthy as the first training and could be accomplished on-farm via an approved DVD/CD without a trainer.

The NCC believes the Agency’s concern of worker turn-over rate and difficulties in verifying worker training will be addressed adequately in Section 7B with a verification card program.

The NCC believes EPA should retain the 5 year frequency of training and re-evaluate the training program to seek improved retention. The NCC believes EPA should conduct a study to evaluate retention benefits for a more frequent – although shorter duration with less detail – refresher.

The NCC further expresses concerns that the increased requirements of these proposed revisions could place unacceptable burdens on many training service providers, resulting in disincentives for them to continue. The Agency should consider the demands on trainers and verify it will not result in a loss of participation by organizations such as the extension service. Additionally, the Agency should calculate the impact of the reduced availability of trainers.

B. Establish Recordkeeping Requirements to Verify Training for Workers and Handlers

The Agency acknowledges the WPS do not currently require agricultural employers to document the required training they provide for workers or handlers. The Agency notes the difficulty of enforcing training requirements when no training documentation is required. Additionally, the Agency notes the state actions that led to the voluntary program which enabled verification cards to be used to demonstrate training completion. The Agency notes reports that workers perceived the card to increase employment potential resulting in fraudulent copies. The Agency now proposes that employers keep records for all workers and handlers who receive pesticide safety training for 2 years on the agricultural establishment and provide a copy of the training records to each worker and handler upon completion of the training. Supposedly, the worker could change employment and provide the employer with the documentation to support training compliance.

The NCC encourages the Agency to explain how the new system addresses fraudulent activities. It appears those with a mindset to fraudulently misrepresent themselves with verification cards could do so with the proposed documentation as well. The NCC does not see this proposed change as an improvement over the verification program, but it does include a recordkeeping burden increase on employers at a cost of \$1.6 million. With the lack of proof that the measure will provide an improvement over the current verification card program, the NCC encourages the Agency to retain the current program.

C. Require Employers to Provide Establishment-Specific Information for Workers and Handlers

The Agency proposes that in addition to required general training, employers must provide establishment-specific information about the location of decontamination supplies and pesticide safety and hazard information, as well as how to obtain medical assistance. The NCC believes producer employers already provide information about the location of decontamination supplies and pesticide safety and hazard information, and emergency contact information. For

clarification, the NCC believes the Agency's use of "how to obtain emergency medical assistance" refers to emergency numbers such as nearest hospital, local law enforcement, local fire department, or similar emergency response agencies. As for pesticide safety information, the NCC assumes the Agency is referring to the location of the pesticide safety poster or proposed equivalent. The NCC supports the proposed changes unless the Agency's meaning of "how to obtain medical assistance" and "pesticide safety information" are substantially different than assumed.

D. Establish Trainer Qualifications

The Agency proposes to:

- 1) require trainers of workers to have completed an EPA-approved train-the-trainer program or be designated by EPA or an appropriate state or tribal agency as trainers of certified applicators;
- 2) require trainers of workers be present during the entirety of the training session and to answer questions and ensure training presentation is free from distractions;
- 3) retain the existing categories for trainers of handlers and add the requirement that the train-the-trainer program be approved by EPA;
- 4) eliminate the automatic authorization of certified applicators and WPS handlers to train workers;
- 5) retain the option for certified applicators to train handlers.
- 6) continue allowing certified applicators to conduct worker training until two years following the effective date of the final rule, and
- 7) allow any interested organization, including non-profit organizations, universities, state regulatory agencies, and the pesticide industry, to seek approval for and administer train-the-trainer course that meets EPA's standards.

In reference to item one, the NCC agrees with the general requirement to complete an EPA approved train-the-trainer program with the retention of the exceptions for certified applicators. With regard to Items 1 and 7, the NCC expresses concerns that interested organizations not be allowed to add content or expand beyond the boundaries that EPA has formally examined and included in a final decision. For example, a list of lawyers or doctors should not be provided to attendees during a training session because attendees may believe the list is an endorsement from EPA.

Item 2 mandates that trainers be present during the entirety of the training session and to answer questions and to ensure training is free from distractions. The NCC would ask the Agency why the trainer who utilizes video presentations may not be granted the flexibility to have a supervisor present to ensure the training is free from distractions and the trainer address questions at the conclusion of the session. Addressing questions during the video presentation becomes a distraction itself for other participants. The NCC encourages the Agency to consider

the time that will be devoted by cooperative extension agents and others and asks that the Agency not place excess time and budget burdens on these organizations. The NCC is concerned that this requirement combined with other burdensome proposals will result in a loss of many skilled trainers and result in larger, consolidated training conferences that discourage questions during the training and discourage interaction after the training program has been completed.

Item 3 retains existing categories for trainers of handlers and adds that train-the-trainer programs be approved by EPA. The NCC again encourages EPA not to allow extraneous material to be incorporated into training programs.

Item 4 proposes to eliminate the automatic authorization of certified applicators and WPS handlers to train workers. The Agency notes that farm worker organizations and pesticide safety educators have emphasized the importance of expertise in both subject matter and in adult education for low-literacy audiences. The Agency cites a pilot train-the-trainer program in Washington State (Ref. 17) that showed participants were more successful at communicating to worker audiences after they had completed train-the-trainer programs based on performance of the audience on a post-training evaluation of knowledge. The Agency acknowledges the certified applicators have demonstrated competency in pesticide application and safety, but argues they may not possess skills to train low-literacy, non-English speaking, adult audiences. The NCC disagrees and argues that certified applicators have working experience with worker audiences that requires them to have the ability to effectively communicate. The NCC believes that dismissing their ability after acknowledging their demonstrated competency will provide additional burdens on other trainer programs and budgets without justification.

Item 5, retaining the option for certified applicators to train handlers, is supported by the NCC.

Item 6 acknowledges that if the proposed changes were adopted, EPA would allow a certified applicator to be utilized for two years from the date of the final rule in order to provide a transition period and generate new trainers. The NCC supports the two year transition if other proposed changes are adopted. The NCC believes the allowance of this two year transition demonstrates the impact these proposed changes will make on demand, availability, and budgets of trainers.

Item 7 has been addressed in conjunction with Items 1 and 3. EPA should recognize that EPA-approved training programs will be perceived as endorsed by EPA and should not allow extraneous materials, advice, and/or counsel beyond the material properly approved according to this final rule which will hopefully reflect stakeholder input.

EPA has estimated the cost of these proposed changes to be \$1.1 million annually. EPA has not been able to quantify benefits nor to provide evidence to support or demonstrate that the proposed changes will provide expected results.

E. Expand the Content of Worker and Handler Pesticide Safety Training

The current WPS requires at a minimum 11 specific basic training points. Stakeholders have urged an expansion to include training on potential sources of pesticide exposure and preventing family exposure. The Agency proposes a number of new provisions to be included in the content for worker and handler safety training. The Agency proposes to add the following topics:

- 1- protection from pesticide take-home exposure;
- 2- enhanced emergency assistance provisions in the WPS; and,
- 3- availability of hazard communication material

Additional worker topics include:

- 1-handler tasks that employers must not direct or allow workers to do;
- 2-early-entry notification requirements including age restriction;
- 3-hazards of pesticide exposure to children and pregnant women;
- 4-how to report suspected violations; and,
- 5-prohibition of employer retaliation for reporting suspected violations or attempting to comply with 40CFR part 170.

Additional handler topics would include:

- 1-proper removal of PPE;
- 2-the requirements for handlers to cease application if persons are in the treated area or entry restricted area;
- 3-the requirement that handler employers must ensure handlers have received respiratory fit-testing, training, and medical evaluation if required to wear a respirator; and,
- 4-the minimum age requirement for handlers to be 16.

The NCC, in general, agrees with the Agency's proposed expansion of training topics in order to further inform workers and handlers how to protect against pesticide exposure and family exposure. The NCC encourages the Agency to consider teaching methods that provide adequate repetition and visualization to maximize learning and retention.

The NCC questions EPA's intent regarding "enhanced emergency assistance provisions in the WPS" and believes insufficient information was provided to clarify the Agency's issue. Similarly, the NCC believes additional information is needed to clarify "How and when to obtain emergency medical care" on page 94.

The NCC additionally seeks Agency policy regarding repeated false reporting of suspected pesticide use violations. It is unfortunate that the system may be abused both ways. Employers are prohibited from retaliation for reporting of suspected pesticide use violations, but it is not clear if there are mechanisms to address repeated false accusations from disgruntled employees. The Agency should discuss the cost of investigating repeated false accusations with State Lead Agencies.

The NCC supports the Agency's decision not to include contact information for legal representation in the training as was requested by farmworker organizations. The NCC agrees that a list advertising legal representation does not contribute to the goals of FIFRA and would create additional burdens to ensure the list does not show favor to some legal representation over others.

F. Retain Audiovisual Presentations as Permissible Methods for Pesticide Safety Training

The Agency has stated its intent to retain the video as a training method. The NCC agrees with the Agency and further emphasized its reference to research that people retain 10% of what they hear and 50% of what they see. The NCC encourages the Agency to evaluate the effectiveness of multiple media presentation format as tools to increase retention rather than annual training (See Item VII. A. Comments).

G. Eliminate Exceptions to Handler Training Requirements

The NCC requests clarification from the Agency on information handlers have not obtained when the handler has been trained with the requirements of 40 CFR Part 171. The exception must have been justified to exist and it seems the Agency is acknowledging significant overlap in training material between the two. The NCC would urge EPA to clarify what training is deficient and consider requiring training in the deficiency areas only.

VIII. Notification to Workers and Handlers

A. Posted Notification Timing and Oral Notification

The current rule allows employers to provide workers with either oral or posted warnings about areas where an REI has been in effect within the last 30 days unless required to provide both oral and posted warnings by the specific pesticide label. EPA proposes to require that agricultural employers post warning signs regarding the application of a pesticide that has an REI greater than 48 hours, and proposes to allow the option of oral warning or posted notification for products with REIs of 48 hours or less.

The Agency acknowledges the request letter of 2006 from farmworker organizations requesting changes to the WPS and particularly identifying three problems with current requirements related to REIs. The Agency cites a 2008 study that used data from 1998 – 2005 which reported re-entry into treated areas prior to the end of the REI as the second leading factor contributing to acute occupational pesticide poisoning cases in agricultural workers. However, the Agency provided no documentation supporting the cause of the reentry to be lack of notification.

The Agency argues “ the proposed posting requirement may also foster compliance and facilitate enforcement because inspectors could readily view posted warning signs.” The NCC would remind EPA that not all producers have large fields in concentrated areas. Many row crop producers have small fields in multiple counties with substantial distances between fields. A requirement for posted notification is significant for these producers. Additionally, petty vandalism is often a problem for these producers. Signs offer an opportunity for additional malicious activity. Producers may not return to some fields more than once per week. Signs can be destroyed, removed, or relocated. Such activities have been experienced with signs identifying crop varieties in fields. The NCC would request the Agency clarify how enforcement would address these challenges without inappropriately penalizing producer employers. The NCC also requests clarification as to whether the Agency considered the costs to producers in revisiting the field, verifying signs remain, and replacing vandalized or dislocated signs. The NCC would further present a hypothetical situation of signs being moved to another producer’s field not in an REI through malicious activity. Please clarify if workers are in violation for entering the field posted but through malicious activity.

The NCC believes workers are fully capable of understanding oral notification and does not believe the Agency has justified this \$11.1 million change. The NCC believes this further demonstrates a proposed change without quantified or demonstrated support. The Agency did cite the Monterey County, California example to support the protective effects of posting requirements, but acknowledged that “California cannot provide specific data on the percent reduction” to demonstrate improvement.

B. Location of Warning Signs

Where the existing WPS requires a warning sign to be posted, the signs must be placed where they are visible from all usual points of worker entry to the treated area, the corners of the treated area, or an area affording maximum visibility. The Agency proposes to revise the required posting locations to include locations visible from a worker housing area if the housing area is within 100 feet of a treated area for outdoor production.

The NCC has no objection to this proposed change when posting is required.

C. Warning Sign Content

The EPA proposes to revise the text and picture on the warning sign. The NCC has no objection to the proposed changes.

IX. Hazard Communications

The proposed revisions would require employers to maintain Safety Data Sheets (SDS) and the pesticide label on the establishment for two years from the dates of the application. It also provides for workers, handlers, or their authorized representative to request access to this information during normal business hours. *Authorized representative* is defined in the proposed rule to mean a person designated by the worker or handler, orally or in writing, to request and obtain any information that the employer is required to provide upon request to the worker or handler.

The NCC understands that there may be language barriers that prevent a worker or handler from directly making such a request and that assistance may be needed. However, the NCC has grave concern over the broad definition of authorized representative. This provision would essentially allow anyone not associated with the operation to come onto a farmer's operation and demand information. Furthermore, the definition would allow an oral designation of an authorized representative. This provision, then, would allow anyone to come onto a private farm and request documents without any proof of authority to do so. The NCC finds this provision unacceptable and we strongly urge EPA to restrict the definition of 'authorized representative' to a person already associated with the farming operation. Typically, a farm crew will have a foreman who is a full-time employee or has been associated with the farm for a number of years and who speaks English. Such a foreman would be the logical choice to serve as an authorized representative.

X. Information Exchange between Handler and Agricultural Employers

The current WPS requires handlers and agricultural employers to exchange information about pesticide applications. EPA proposes to include with the existing requirement additional information about the location of the "entry-restricted areas" and the start and end times of the pesticide applications. EPA proposes to require the handler employer to provide any changes to the application plans to the agricultural employer within 2 hours of the end of the application rather than before the application. Changes to the estimated application end time of less than one hour would not require notification.

The NCC urges the Agency to realize that pest populations warranting treatment often occur over a large area resulting in numerous producer requests for a treatment application on numerous

fields. Applicators must evaluate weather conditions, including wind speed and direction, verify absence of bystanders, and other considerations in order to determine which applications are possible at the given time. These factors demand some flexibility to ensure applications are carried out in a safe manner consistent with label requirements. Concurrently, timing of applications is critical in order to minimize economic loss of crop yield. These situations often result in multiple days of critical evaluations and field application selections in order to complete application needs in a safe manner. Proposing to require notification of changes within 2 hours of the application is not a reasonable request and would further burden a stressful situation. The Agency is encouraged to recognize the complexity of the current decision making process and the importance of those decisions without creating additional burdens.

Realizing that agricultural employers must inform workers of treatments and REIs, it is reasonable to require notification of changes to the treatment plan: 1) prior to the application if the application is made earlier than planned, or 2) prior to the expiration of the REI planned if the application is made later than planned. This proposal would ensure workers are not allowed in areas under an REI without overburdening applicators.

XIII. Expansion of Entry-Restricted Areas

EPA is proposing to establish entry-restricted areas during applications on farms and in forests. An agricultural employer would be prohibited from allowing or directing any worker or other person, other than an appropriately trained and equipped handler, to enter or remain in the restricted area during an application. The entry-restricted area would surround the entire treated field and would include a buffer of 25 feet for ground applications and 100 feet for aerial applications from the treated field, respectively.

The NCC believes that the 100-foot restricted area seems excessive particularly since wind direction is not being considered in this provision. This proposal could result in unnecessary disruption of farm operations and could include farm and access roads and permanent shops and other work areas. The current WPS prohibits applicators from applying pesticides in a way that results in contact with workers or other persons. This language should be sufficient to address EPA's concern about worker exposure due to drift and would also avoid any unintended consequences or disruption of farm operations due to a prescribed restriction area.

XIV. Decontamination (specifically for workers who enter a treated area in which an REI is in effect as part of a suite of proposed changes to the protection of early-entry workers)

A. Clarify the Quantity of Water Required for Decontamination

The Agency proposes to require that employers must provide one gallon of water per worker for routine decontamination and three gallons of water per handler for routine washing and emergency decontamination.

The NCC understands this proposal to be clarification and codification of existing compliance expectations.

The NCC encourages EPA to evaluate the use of waterless cleansing agents or substitutes with less weight and mass. Such substitutes would likely result in a more abundant supply of decontamination material available.

B. Eliminate the substitution of Natural Waters for Decontamination Supplies.

Generally, the WPS requires agricultural and handler employers to provide decontamination supplies no farther than one quarter mile away from where workers and handlers are working. One exception to the requirement is if worker and handler activities occur more than one quarter mile from the nearest point of vehicular access, soap, single-use towels, and water may be located at the nearest point of vehicular access, but the employer may allow workers or handlers to use clean water from natural water bodies. The Agency proposes to eliminate the exemption that allows agricultural and handler employers to use clean, natural bodies of water in lieu of the required decontamination supplies. Employers would be allowed to utilize natural water bodies to supplement needs in the event of an emergency.

The NCC requests clarification on how the elimination of the use of natural waters improves worker protection given that the exception, as stated, applies only when workers and handlers activities are more than one quarter mile from the nearest point of vehicular access.

The NCC urges the Agency to reconsider this proposal. While agriculture is highly mechanized, it should be recognized that there are many large scale planting operations. Activities in these large scale fields may at times place employees greater than ¼ mile from vehicular access. It does not seem reasonable to expect employees to carry the required amount of decontamination water with them, and would be more reasonable to retain the exception for such circumstances in order to maximizing worker protection.

C. Requirements for Ocular Decontamination in Case of Exposed Pesticide Handlers

The existing WPS requires employers to provide handlers one pint of water to be carried for eyewash flushing in case of ocular exposure. The Agency proposes that in addition to the one pint, employers be required to provide at permanent mixing sites clean, running water sufficient for providing at a minimum 1.5 liters (0.4 gallons) per minute for 15 minutes for eye flush purposes in case of ocular pesticide exposures. Any water supply that meets the proposed standard would suffice.

The NCC believes the proposed change is reasonable and appreciates the Agency's flexibility in allowing any supply meeting the proposed standard to be deemed in compliance.

D. Showers for Handler Decontamination

The Agency considered requests from farmworker organizations to require showers at the workplace, but decided not to propose it because EPA believes that the additional training content for handlers (Unit VII.E.) and clarified decontamination provisions in Unit XIVA provide handlers with adequate information on how to reduce take-home exposure.

The NCC agrees that workers are not likely to use shower facilities on farm sites and change clothes before returning home. Workers are generally focused on getting home where they can shower, change, and relax. The NCC believes the few workers that would use shower facilities at the work place would likely change clothes after the shower but not likely change boots/shoes. They would likely get in their work vehicle and return home. The worker would likely then perceive they have satisfied any concern about take-home exposure.

The NCC agrees that providing adequate information on reducing take-home exposure is a better approach.

The NCC supports EPA's decision to not require employers to install showers for handlers. As EPA has noted, such a requirement would be very expensive with no guarantee of use.

XV. Emergency Assistance

EPA is proposing to require agricultural employers and handler employers to provide emergency medical assistance within thirty minutes after learning that an employee has been poisoned or injured by exposure to pesticides as a result of his or her employment, replacing the current standard of "prompt". The emergency medical assistance includes both providing the required information and making transportation to a medical facility available to the affected worker/handler.

The NCC understands EPA's desire to define the word, 'prompt', by substituting it with a specific time frame. However, we would also urge EPA to allow some flexibility into this provision. In western cotton regions, farms can be very large and, in other areas, fields may be a significant distance from the central farm management site. Providing both the required pesticide information and transportation to medical facilities may not be possible within a 30 minute time frame.

XVI. Personal Protective Equipment

A. Chemical –Resistant PPE

The existing WPS requires employers to provide "chemical-resistant" PPE in certain circumstances but does not provide a practical method for evaluating whether the material meets the standards. The Agency proposes to redefine "chemical-resistant" to mean that the PPE must be identified by the manufacturer as chemical resistant.

The NCC believes the proposed change clarifies terminology in a reasonable manner that should assist employers as they strive to maintain compliance.

B. Closed Systems

The existing WPS permits exceptions to the label-specified PPE when using a closed system for certain handling activities. A closed system is an apparatus designed for mixing and loading pesticides that enables the transfer of a pesticide from its original container into a new container, mix tank, or application equipment while limiting the handler's exposure to the pesticide. Existing WPS fails to provide specific criteria for an acceptable closed system. The existing WPS provides only a description of a closed system as one that "enclose[s] the pesticide to prevent it from contacting handlers or other persons." EPA proposes to adopt the California closed system standards as outlined in the Director's Memo, except where there are specific references to California-specific information. EPA will consider any changes made to California's standard and the supporting rationale when developing the final standard for closed systems in the WPS. In addition to proposing the standard, the proposal establishes requirements for the use of the closed system. To be eligible for the exception to the label-specified PPE, the Agency proposes to require that the employer ensure that the handler receives training on the use of the closed system, perform maintenance according to the manufacturer's written instructions, and maintain records of all maintenance for 2 years.

The proposed rule would retain the following current requirements: 1) label-mandated PPE must be immediately available for use in an emergency; 2) handler must use protective eyewear for

closed systems that operate under pressure; and 3) a respirator must be worn if required by the label.

The NCC realizes the Agency's desire to clarify qualifications for a closed system, but urges the Agency to not adopt the proposed system specifications. The NCC urges the Agency to clarify if the proposed requirements would remain the same for aerial application operations and farm ground equipment operations. The NCC urges the Agency to consider the vast differences in the application scale between the two. The NCC urges the Agency to clarify if the specified pressure would provide sufficient movement for product mixing and agitation in the mixing tank. If products do not mix sufficiently, equipment can become clogged which can require maintenance with product present, greatly increasing exposure potential.

The NCC has visited with aviation experts, and encourages the Agency to recognize their experience and expertise at handling large loads and a variety of product formulations. Additionally, their operations strive to accomplish high efficiency in minimal time. This goal places high emphasis on identifying low maintenance, accurate, high output equipment with maximum protection. The NCC supports the concerns expressed by aerial applicators and urges the agency to not adopt this proposed change.

The Agency noted that California was considering changes to the Director's Memo criteria, and that "EPA will consider any changes made to California's standard and the supporting rationale when developing a final standard for closed systems in the WPS." The NCC urges the Agency to not adopt California's changes without full stakeholder engagement. The NCC further expresses concern that such action would set a precedent of Agency deference to a State Agency.

C. Contaminated PPE

The current WPS requires employers either to clean or properly dispose of contaminated PPE. EPA proposes to require employers to "render unusable" before properly disposing of PPE that cannot be decontaminated according to the manufacturer's instructions. This requirement would supposedly protect workers, handlers, and others from unnecessary exposure resulting from the wearing of contaminated garments.

The NCC recommends this proposal be deleted because it does not accomplish anything not already covered by the "clean or properly dispose of" section. The NCC is concerned about compliance challenges resulting from the interpretation of "render unusable".

D. Eyewear Protection for Open Cockpits

The NCC defers to comments from the National Agricultural Aviation Association regarding this proposal.

E. Respirators: Fit Testing, Training, and Medical Evaluations

The NCC requests EPA to clarify its intentions in referencing the OSHA standard, 29 CFR 1910.134. It is unclear if the agency is incorporating the entire OSHA standard by reference. This OSHA standard says that if respirators are necessary to protect the health of the employee, the employer must establish a written respirator program with worksite specific procedures. Kathy Davis, Field and External Affairs Division, Office of Pesticide Programs, stated by phone to us that EPA intends to use only the fit testing, medical evaluations, and training portions of the OSHA standard. The Agency needs to make this reference clear in its documents.

The OSHA standard requires the use of respirators certified by the National Institute for Occupational Safety and Health (NIOSH). If EPA adopts this requirement, the Agency needs to document the costs of purchasing certified respirators.

The NCC agrees that proper fitting and training are important components in the effective use of respirators. However, we have serious concerns over the requirement for medical evaluations. The OSHA standard requires a medical evaluation to determine the employee's ability to use a respirator before fit testing and use. The employer must identify a physician or other licensed health care professional (PLHCP) to perform medical evaluations using a medical questionnaire or an initial medical examination that obtains the same information as the questionnaire. The employer must also obtain a written recommendation regarding the employee's ability to use a respirator from the physician or PLHCP. Additional medical evaluations are required under certain circumstances.

The NCC believes this requirement for medical evaluations is excessive, costly, and prohibitive. The number and accessibility of medical personnel with this type of expertise is unknown. Physicians or PLHCP's with enough knowledge on respirator use are likely to be scarce in rural areas. A cost estimate of \$54 for agricultural establishments per year seems very low considering that a considerable distance may have to be travelled to reach an appropriate medical facility.

A feasible alternative to this medical evaluation requirement would be for EPA or NIOSH to develop a questionnaire or list of medical conditions that would prevent an employee from safely using a respirator. If an employee has any of these conditions, he could not be compelled to use a respirator but could do so voluntarily.

XVII. Monitoring Handler Exposure to Cholinesterase-Inhibiting Pesticides

The NCC supports EPA's decision to not require cholinesterase monitoring of pesticide handlers. Such a requirement would be extremely time-consuming and costly and would provide information of questionable value. EPA's worker risk assessments and mitigation are sufficient to provide protection from pesticide exposure during handling.

XVIII. Exemptions and Exceptions

The EPA is not proposing to impose any age requirements on establishments that qualify for the immediate family exemption to the WPS. The WPS exempts the owners of agricultural establishments from providing certain WPS protection to themselves and their immediate family members. Specifically, the agricultural establishment owner is exempt from complying with the following requirements for immediate family members performing tasks as workers: Sections of the early entry restrictions; providing pesticide safety training or other safety information; cleaning, storing, and maintaining PPE; maintaining decontamination sites and supplies; providing notice of and specific information about applications; and providing emergency assistance. Similarly for immediate family members performing handler tasks, the agricultural establishment owner is exempt from the following requirements: Providing pesticide safety training and other safety information such as restrictions during applications, knowledge of labeling and site-specific information, and safe operation of equipment; ensuring proper use, cleaning, and maintenance of PPE and avoiding heat-related illness while using PPE; maintaining decontamination sites and supplies; and providing emergency assistance. The agricultural establishment owner must comply with all other sections of the WPS. The immediate family includes only the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, and sisters-in-law of the owner of the agricultural establishment.

In addition, the definitions of workers and handlers require that they are employed for compensation in order to receive protection under the WPS. Therefore, any person performing worker or handler tasks who does not receive a wage or salary is not covered by any aspect of the WPS.

The NCC supports the Agency's decision not to propose a change to the immediate family exemption.

B. Crop Advisors and Employees

The WPS allows crop advisor tasks to be conducted during pesticide application and during subsequent REIs. The Agency proposes to limit this exemption to crop advisors only, eliminating from the exemption employees directly supervised by certified or licensed crop advisors.

Crop advisor tasks include assessing pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants, but not performing hand labor tasks. When performing crop advising tasks after the REI has expired or performing hand labor tasks, and employed by the agricultural establishment, a crop advisor is considered a worker under the WPS. A person employed by a commercial pesticide handling establishment performing crop advising tasks after expiration of an REI is not subject to any provisions of the rule.

The WPS exempts the employer from complying with some handler requirements when the employee performs crop advising tasks during an REI and is a certified or licensed crop advisor or directly supervised by a certified or licensed crop advisor. To qualify for this exemption, the crop advisor certification or licensing program must include, at a minimum, all information listed under handler training, 40 CFR 170.230(c)(4). Under the current WPS, the certified crop advisor must make specific determinations regarding the appropriate PPE, decontamination, and safe method of conduct for those working under his or her direct supervision. This information, as well as information regarding the product, method and time of application, REI, tasks, and contact information, must be conveyed by the certified crop advisor to each person under his supervision. Currently, the WPS exempts employers from complying with worker requirements such as providing decontamination supplies and emergency assistance for certified or licensed crop advisors and persons they directly supervise.

The NCC strongly urges EPA to not adopt this proposed change. The NCC has consulted with the National Alliance of Independent Crop Consultants (NAICC) representatives who have expressed strong opposition to this proposed rule. Additionally, the representatives are concerned a miscommunication has misrepresented their position. The NCC would urge the Agency to revisit the NAICC with regards to their position and concerns.

The NCC is concerned that removal of this exemption will greatly impede IPM practices. Crop consultants have employees to assist them in carrying out their field monitoring and evaluation. Losing these assistants, the consultant will be forced to make decisions with less information. Fewer data points will result in greater weight to a single pest find and is likely to result in more pesticide applications than would have been applied if the additional information would have been available. The NCC believes EPA has greatly underestimated the real cost of this proposal.

The NCC respectfully disagrees that those under the crop advisors supervision may be unaware of the risks posed by pesticides. The NCC would argue that the general public is aware of the risks posed by pesticides, and more often unaware that risks can be mitigated. Additionally, it is previously stated “Under the current WPS, the certified crop advisor must make specific determinations regarding the appropriate PPE, decontamination and safe method of conduct for those working under his or her direct supervision. This information, as well as information regarding the product, method and time of application, REI, tasks, and contact information, must be conveyed by the certified crop advisor to each person under his supervision”.

C. Revise the Exception to the requirement for Workers to be Fully Trained before Entering Pesticide-Treated Areas

When EPA was developing the 1992 WPS, agricultural employers argued that they needed a training grace period because qualified trainers were not available in sufficient numbers to meet the need for worker training. To accommodate the need for flexibility for agricultural employers and, in recognition of the high turnover in the workforce on some establishments, EPA adopted the grace period. The 1992 rule allowed agricultural employers to direct workers to perform work in pesticide-treated areas for up to 15 days before the employer was required to provide the full pesticide safety training outlined. Later revisions shortened the period to 5 days.

The exception would allow agricultural employers to postpone providing full pesticide training for up to 2 days after the worker begins work in WPS- covered areas. In order to qualify for the exception, agricultural employers would be required to provide certain safety information, which would incorporate both the information currently required by the regulation and additional content, to workers in a language and manner they understand before workers perform any WPS-covered tasks in a treated area. Agricultural employers would also be required to maintain records of the information provided to workers for 2 years. Finally, agricultural employers would be required to provide the full pesticide safety training to workers before sending them into any treated area for a third day where, within the last 30 days, a pesticide product bearing a label requiring compliance with the WPS has been used or an REI for such a pesticide has been in effect.

NCC recommends EPA provide more clarity about how an employer is determined to be in compliance.

The NCC believes the proposed changes to trainer qualifications and duration could have a large impact on the availability of trainers and asks the Agency to take this into consideration when formulating the final rule.

The NCC asks the Agency how many employers are currently using this option. The proposed change to reduce the grace period from 5 to 2 days at a cost of \$2.3 million dollars is significant. If the exception is seldom used, it is doubtful a benefit will be realized by reducing the period by 3 days. The two day period would allow the worker to be employed during the weekend, but it is uncertain if it would give the employer time to locate a training session and enroll the employee. The third day allows the employer to make arrangements for the employee to be trained by the fourth day. If employment were needed such as described, then, at least 4 days would be needed. The NCC urges EPA to retain this exception with the current grace period.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in cursive script that reads "Mark Lange".

Mark Lange
President & CEO