



PPC

PESTICIDE POLICY COALITION
A Coalition Working for Sound Pest Management Policies

www.pesticidepolicy.org

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OPP Docket

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Re: Docket No. EPA-HQ-OPP-2011-0184: Agricultural Worker Protection Standard Revisions; Proposed Rule: 40 CFR Part 170. 79 FR 15443. March 18, 2014

Ladies and Gentlemen:

The Pesticide Policy Coalition (“PPC” or the “Coalition”) is pleased to submit comments on EPA’s proposed revisions to 40 CFR Part 170, the Agricultural Worker Protection Standard (WPS), published on March 19, 2014 by the Environmental Protection Agency (EPA, or “the Agency”). With this document we raise general concerns held by PPC members about a number of facets of the Proposed Rule. By reference, we support also the views of PPC member organizations that have submitted comments separately.

PPC is an organization that represents food, agriculture, forestry, pest management and related organizations that support transparent, fair and science-based regulation of pest management. PPC members include: nationwide and regional farm, commodity, specialty crop, and silviculture organizations; cooperatives; food processors and marketers; pesticide manufacturers, formulators and distributors; pest/vector-control operators and applicators; research organizations; and other interested parties. PPC serves as a forum for the review, discussion, development and advocacy of pest management policies and issues important to its members.

BACKGROUND

The WPS is intended to provide a uniform set of complementary requirements for employers of agricultural, including forestry, workers and handlers across the country to help implement pesticide product label requirements under the Federal Insecticide,

Fungicide and Rodenticide Act (FIFRA). EPA's scientifically rigorous process for registering and re-evaluating pesticides under FIFRA provides the technical assessments and label requirements ensuring that, when used properly, each pesticide product will not cause unreasonable adverse effects to human health and the environment. It is at this intersection of available technical information and safety that the WPS operates.

With the Proposed Rule, EPA seeks to update WPS provisions that have been in place since 1992. The proposed changes to 40 CFR Part 170 are accompanied by an extensive "Preamble," in which the Agency attempts to justify the proposed changes based on demographics of migrant workers, concerns of farmworker organizations, and assumptions of frequent acute overexposures and chronic illnesses of farmworkers — even when the pesticides involved are used according to EPA-approved label requirements. We are very concerned with much of the rhetoric in the Preamble. EPA has embraced the arguments and objectives of farmworker organizations, while apparently overlooking the input from actual state co-regulators; based many arguments on outdated worker demographics; and made unfounded assumptions regarding worker exposures and chronic illnesses, without supporting scientific evidence. Had the Agency cited current literature, it would have acknowledged significantly improved farmworker demographics and safety since 1992; a steep and ongoing reduction in incidents of acute poisoning; and a lack of evidence of elevated levels of chronic illnesses among farmworkers. EPA cites a reduction in such illnesses and associated risks under the estimated benefits to the Proposed Rule, but admits it is "not able to quantify the benefits expected to accrue from the proposed WPS changes that would reduce chronic exposure to pesticides." The PPC is very concerned that the assumptions and rhetoric of the Preamble discredit the rigor of EPA's pesticide registration and registration review processes; overlooks the many advances in new pesticide products and application technologies made since 1992; and dismisses the extensive worker-protection stewardship programs of states, registrants, professional applicators and agricultural producers.

We agree that much has changed in the 22 years since the WPS was promulgated — many new crop protection products; scientific and technological advances in pesticide regulation; extensive technological advances in product application and spray drift reduction methodologies; and significant advances in computer-aided management of agricultural operations. However, EPA's Proposed Rule overlooks these advances and seeks to impose granular new responsibilities in a wholesale rewrite of the current regulation.

In addition to these points, we are concerned also that the Proposed Rule overlooks and underestimates the adverse economic impacts it will have on small and large entities alike. The Agency acknowledges the Proposed Rule will affect an estimated 300,000 or more small farms, nurseries, and greenhouses, plus many hundred other types of small commercial entities, including aerial and ground applicators, contracted to control pests. In the Preamble, EPA "...certifies this action will not have a significant adverse economic impact on a substantial number of small entities." We disagree, and contend that EPA's anticipated impact of less than 0.1% of the annual value of sales or revenues for the

average small entity is understated. EPA's economic analysis also fails to appreciate the true cost of the proposed action for other stakeholders and regulatory partners (e.g., state lead pesticide agencies) in complying with and enforcing the Proposed Rule. EPA notes throughout the Preamble and economic analysis that many of the proposed requirements would not add costs or would be difficult to quantify. We are concerned, however, that there will be numerous additional costs, especially during the initial years of implementation.

Overall, we dispute the Agency's conclusion that wholesale WPS changes are needed, and in these comments we discuss our concerns with specific provisions of the Proposed Rule. We support appropriate levels of training of workers to help them embrace the changes in agricultural practices, pesticide products, and pesticide registration requirements since 1992, and to continue to ensure that pesticide labels are adhered to. Worker safety is a responsibility shared by workers as well as employers, and every reasonable effort should be made to enhance workers' understanding of their role in maintaining the safety of themselves and of their families; improve their consistency of illness reporting; reduce worker errors; and avoid inadvertent misuse of products and WPS noncompliance by workers. We are confident the current version of the WPS is effective, and through its use, farm worker health and safety have improved significantly in the last 22 years. We do not support the Agency's rewrite of the current WPS to embrace unjustified assumptions or activists' goals. Furthermore, we reject all of the alternative scenarios discussed by EPA in the Preamble. We are confident that the current WPS, in tandem with the risk assessment process for individual pesticides, is working well to protect farm workers and pesticide handlers. Instead of promulgating this Proposed Rule, we urge the Agency to focus the necessary resources to work with state lead agencies and agricultural stakeholders to enhance the effectiveness of the current WPS. In the following comments, the PPC highlights concerns with EPA's Proposed Rule. The Agency should not construe our comments as tacit support for the Proposed Rule.

COMMENTS

Definitions (§170.5):

(a) EPA should remove the concept of an "*Authorized representative*" from the Proposed Rule. We believe this new provision would lead to a wide range of legal and practical complications, while doing nothing to further the purpose of the WPS or facilitate a sound pesticide regulatory framework. This proposed expansion of the WPS raises complex and confusing legal issues and may conflict with multiple areas of very complex federal and state labor law. This appears to be an explicit endorsement of union participation in the farm employment and WPS enforcement by the federal government. It is not EPA's role to directly engage in labor law issues. Even if the "authorized representative" designation were to be required in writing, it would be a challenge for both the regulated entities and state lead agencies to protect against liability in responding to fraudulent claims or interests seeking to utilize this provision for non-WPS purposes.

(b) EPA's proposed expanded definition of "*Immediate family*" provides greater clarity to

who qualifies under the immediate family exemption and will assist both the regulated community and state regulatory agencies in ensuring compliance with the proposed rule. Due to the changing demographics of farmers and farm incorporation, “*cousins*” should be considered exempted family members also, if EPA were to promulgate the Proposed Rule.

(c) Advances in technology and restrictions imposed by EPA in the last decade have done away with human flaggers, replaced by Global Positioning System (GPS) tracking equipment. Should EPA promulgate the Proposed Rule, the definition of “*Handler*” should be updated to eliminate “*Acting as a flagger*.”

(d) The Proposed Rule creates confusion by separately defining “*Commercial pesticide handler employer*” and “*Handler employer*”, with overlapping but not identical definitions. The Preamble adds the variation, “*commercial handler employer*.” The two defined terms appear to be used interchangeably in the Proposed Rule.

Agricultural employer duties (§170.9): Were the Proposed Rule to be promulgated, we urge EPA to address the following areas of concern within this section:

- Subsection 170.9(a) would incorrectly require every agricultural employer to ensure that any pesticide applied on the agricultural establishment is used in a manner consistent with the FIFRA product label as well as the WPS. This would impose legal and practical burdens on employers to establish oversight responsibilities over handlers and contracted applicators, a role well beyond the regulatory scope of the WPS. The agricultural employer is responsible only for compliance with the WPS portions of the pesticide product label.
- Subsection 170.9(f) would require agricultural employers to provide a range of “emergency” responses “within 30 minutes” to a person who is or ever “has been employed” by an agricultural establishment. With this proposal, the Agency would change “prompt” to “within 30 minutes.” For many employers and aerial applicators (“*handlers*”) this change would impose an impractical and legal burden for those farther than 30 minutes away from an operating emergency medical treatment facility. We recommend EPA to retain the current “prompt” response that recognizes variable geographic locations and proximity to transportation and medical facilities, instead of expecting a response “within 30 minutes” under all circumstances nationwide. EPA also should clarify what would qualify as an “emergency medical facility.” Furthermore, the requirement to provide emergency assistance to any person who “has been employed” implies that any person ever employed, for any period of time, by an agricultural employer could make this demand at any interval following the conclusion of their employment. This subsection creates significant technical and legal burdens. Responsibility for emergency responses should apply only to *current* employees seeking emergency medical assistance for acute incidents.
- Subsection 170.9(f) references “poisoned or injured,” but as written, the definition is vague and could require agricultural employers, under the WPS, to provide emergency assistance for minor health issues that may not be pesticide related. While this may be good employment practice, work-related injuries and poisonings not related directly to pesticide use are outside the jurisdiction of EPA and its regulations, and should not be made a matter of FIFRA infraction or enforcement.

Pesticide information requirements on agricultural establishments (§170.11): Subsection 170.11(a)(1) describes the pesticide safety content information that must be conveyed to workers and handlers; however subsection 170.11(a)(1)(ix) improperly directs employees seeking emergency medical attention to contact not employers, but state lead pesticide agencies officials who are responsible for enforcement, rather than for emergency medical attention. We also are concerned that subsection 170.11(b) and other provisions elsewhere in the Proposed Rule mistakenly require agricultural employers to maintain copies of pesticide product “labeling.” Under FIFRA definition, “labeling” includes much more literature than the printed “label” itself, and this provision would impose an unnecessary burden that could result in technical violations, but provide no added benefits to worker protections. The pesticide “label” and EPA registration number of the product are sufficient to provide appropriate information for emergencies.

Duties of the Commercial pesticide handler employer (§170.13): This section of the Proposed Rule would identify responsibilities of employers (including self-employed persons who are handlers) of handlers who perform any of the following activities:

- Mixing, loading, or applying pesticides;
- Disposing of pesticides;
- Handling opened containers of pesticides; emptying, triple-rinsing, or cleaning pesticide containers; or disposing of pesticide containers that have not been cleaned;
- Acting as a flagger;
- Cleaning, adjusting, handling or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues;
- Assisting in the application of pesticides;
- Entering an enclosed space after the application of a pesticide and before the safe inhalation exposure level has been reached or ventilation criteria listed on the label have been met, or to adjust or remove fumigation coverings;
- Entering a treated area outdoors during the label-specified entry restricted period to adjust or remove coverings used in fumigation, such as tarpaulins; or
- Performing tasks as a crop advisor during any pesticide application or restricted-entry interval or before the inhalation exposure level has been reached or one of the ventilation criteria met.

This represents a broad group of farm employees, and the duties described in §170.13 are comprehensive. Among these, several are concerning. These include:

- Subsection 13(a) once again would require the employer to ensure that any pesticide applied on an agricultural establishment is used in a manner consistent with the pesticide product labeling, including the requirements of the WPS. As we stated above, employer responsibilities extend to the WPS requirements only.
- Subsection 13(j) is concerning also, because it would require handlers to provide the agricultural employer “within 2 hours” details of any changes to the information specified in §170.13(i), including the time when each application starts and ends. During the busy pest-control season, aerial applicators (“handlers”) often spray fields

across a wide area (even in more than one state) for a wide range of farmer customers. Work periods may begin at 4 am and end after 9 pm, or much later for operators who apply at night. For any specific contract, pilots may suspend treatment of one field (the on-board GPS noting the precise stopping location) due to weather changes, and then complete at a later time. Pilots may return to a specific field three or four times during the day to complete an assignment. Such a requirement to communicate within 2 hours of any change is impractical for both daytime and nighttime applications and simply creates untold legal burdens unnecessarily.

- Subsections 13(k)(2)(i), (ii), and (iii) are problematic because the emergency assistance information requirements would apply to any person who is employed or has been employed. We provided greater detail in our comments on Section 170.9(f)(2)(ii) and (iii), above.

Training requirements for workers (§170.101): This section identifies the requirements for worker training, the information to be conveyed, and who is eligible to do the training. The PPC supports the role of worker safety education and task training in preventing adverse incidents and satisfying the protections incorporated in product labels.

- Subsection 101(a) would require worker training every 12 months. Though uniform training may seem to be the simplest approach to training, we are not convinced the case has been made to justify a move from 5-year to annual retraining intervals for workers. Training interval and content should recognize the workers' existing experience and previous training, the nature of the duties of the workers, whether changes in duties have occurred since the last training, and demographics of the establishment involved. If the agency believes that some training is needed more frequently, we suggest that, at most, an annual refresher training course coupled with 5-year in-depth retraining should be adequate for experienced workers.¹ Alternatively, EPA may wish to consult with state departments of agriculture in crafting an approach under which each state can evaluate the needs within its own jurisdiction to determine the appropriate interval of training. We believe states should be permitted to align the WPS training interval for workers and handlers with the individual state's requirements for Private Applicator Certification, which range from 3 to 5 years in many states. We believe states should be able to align the WPS training interval for workers and handlers with the individual state's requirements for Private Applicator Certification, which range from 3 to 5 years in many states.
- Subsection 101(c)(4) would require an authorized trainer of workers to either (i) be an EPA- or state-designated trainer of certified applicators ("handlers"); or (ii) have completed an EPA-approved pesticide safety train-the-trainer program for trainers of workers; or (iii) be a certified applicator of restricted use pesticides. Option 3 would be phased out 2 years after promulgation of the Proposed Rule. We believe training requirements should be consistent between workers and handlers, and recognize the

¹ The American Farm Bureau Federation, in comments on this Proposed Rule, has highlighted its support of the existing 5-year training interval requirement and its view that more frequent training should not be required.

need for all trainers to possess the ability to effectively explain the safety provisions of the WPS. We are concerned nonetheless that (iii) implies certified pesticide applicators of restricted use pesticides will not be legally eligible to train workers in the future. Such certified pesticide applicators are legally capable of training and supervising a non-certified applicator to apply restricted-use pesticides. We believe certified applicators have the appropriate skill set and expertise to serve as WPS trainers under both the current and proposed WPS frameworks, and oppose the phase out of that role following the implementation of the final rule.

- Subsection 101(d) would require each agricultural employer to maintain on the establishment for 2 years and make available to the worker a series of records on safety training, including the trained worker's printed name and signature; date of birth; date of training; identification of which EPA-approved training materials were used for training; the trainer's name and documentation showing the trainer met the requirements of this subsection at the time of training; and the employer's name. While we recognize the likely need for valid, transferrable documentation of training for workers who change employment, we support the Agency's decision to not pursue proposals such as a wallet card with pertinent information; employer submission of training records to EPA, state, territory or tribal regulatory authorities for development of a central repository; retention of records by trainers; or establishment of a 5-year interval for record keeping. We do not believe such options are justified in terms of cost or in terms of the value they bring to protecting workers. We also do not support records being provided to a "third party authorized representative," even if authorized in writing, because the requirement would not provide any added WPS benefit and would be subject to abuse. With better explanation, PPC members may be able to support "refresher" training at more frequent intervals, along with some transferrable method of documenting worker training under the current WPS, but we are concerned that EPA's Proposed Rule would shift the current regulatory responsibility from EPA and state lead agencies to agricultural employers, imposing the cost and responsibility for implementing and maintaining a new recordkeeping system that are not considered in the Information Collection Request (ICR).

Establishment-specific information for workers (§170.103): This section would require that before any worker performs any task in a treated area on an agricultural establishment, where within the last 30 days a pesticide product bearing a label requiring compliance with the WPS has been used, or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that the worker has been informed orally, in a manner that the worker can understand, about establishment-specific information about location of pesticide safety information, location of pesticide application and hazard information, and location of decontamination supplies. We support such information transfer to new workers, but question why this is identified as a new requirement. Under the current WPS "EPA approved" training already occurs and must be presented in a manner that the worker can understand, such as through a translator.

Entry restrictions associated with pesticide applications (§170.105): EPA proposes to expand current regulations to require agricultural employers to restrict handlers, workers and other persons (other than appropriately trained and equipped handlers) on agricultural establishments from being in entry-restricted areas (ERAs) adjacent to those areas targeted for pesticide application. The ERA would apply during application and within the property lines of the agricultural establishment, and would be distinct from the restricted-entry interval (REI) that would limit reentry into a treated area for a specific period of time after the application ends. The size of such entry-restricted area would depend on the types of product applied and the application method, but for many common application methods (e.g., applications made by aircraft or airblast orchard sprayers, fumigants, aerosols, etc.) the Agency proposes the ERA would extend 100 feet beyond the treated area in all directions within the boundaries of the agricultural establishment, in order to avoid spray drift exposures to workers and handlers. For most other application methods (e.g., ground boom applications more than 12 inches above the soil, or those with a fine spray, pressure >40 psi but <150 psi, or those for which a respirator is required by the product label), the Agency proposes the ERA would extend 25 feet around the treated area, within the boundaries of the agricultural establishment.

Were the Proposed Rule to be promulgated, we believe the ERA requirement should be restricted solely to the size of the treatment area. Our concerns include:

- The current WPS already requires handlers and applicators to take actions necessary to ensure bystanders and other unauthorized persons are not exposed to spray or spray drift.
- EPA's exposure assessments, risk assessments and pesticide labels include conservative protections of applicators, handlers, agricultural workers and bystanders.
- EPA's assumptions of exposures from spray drift justifying the ERA are not supported by advances in spray drift reduction technologies (DRTs), applicator standard operating procedures (SOPs) or published incident data. The PPC and its members have commented extensively in recent months about EPA's misperceptions about drift and inaccuracies of models for determining exposures from off-target spray drift resulting from aerial and ground applications of pesticides. The requirement for 25-100 foot wide ERA is a manifestation of these misperceptions.
- The requirement for an ERA is not justified by most published incident data. EPA concludes from one referenced study² that "[M]any incidents of drift and off-target application have resulted in reported worker illness." We do not support this conclusion. In its comments on this Proposed Rule, the National Agricultural Aviation Association (NAAA) cites data collected by the Association of American Pesticide Control Officials (AAPCO) on aerial-application spray drift incidents for the years 2002, 2003 and 2004.³ An average of 247 confirmed incidents were reported annually from aerial applications made to more than 70 million acres of U.S. cropland. (Almost

² Calvert, TM, et al., 2008, "Acute pesticide poisonings among agricultural workers in the United States, 1998-2005," American J. Ind. Med. 51, No. 12, 2008: 891.

³ <http://www.aapco.org/documents/surveys.pdf>

19% of all pesticide applications made in the U.S. to commercial farms are made by air). Furthermore, CropLife America (CLA) cites in its comments on this Proposed Rule, the California annual Pesticide Use Reporting for 2011 showing more than 2.4 million agricultural pesticide applications in the state, while only 76 cases of worker exposure to drift (resulting from all application equipment types) leading to illness were reported (California 2011 Pesticide Illness Surveillance Program Database). This figures out to approximately three cases per 100,000 pesticide applications, which is consistent with annual statistics for 11 states reported by National Institute of Occupational Safety and Health (NIOSH) researchers.⁴ Of those 76 cases, none of the incidents would have been prevented by implementing the restricted entry ERAs proposed by EPA;

- The proposed ERA requirement would effectively require applicators to monitor continuously and cease or suspend pesticide application if anyone entered, even briefly, an area within the ERA on any side of the application target. For aerial applicators the burden would be particularly onerous, for it is entirely unclear how a pilot could safely maneuver the aircraft and correctly apply the pesticide, while at the same time monitoring all associated ERAs and judging whether or not an observed person entering the ERA is authorized to be there. In the absence of such information, aerial applicators would have to assume anyone present anywhere in the ERA is unauthorized and suspend treatment, while trying to communicate with the farmer from the cockpit to ascertain the status of the observed person.
- Since many pesticide applications occur along rural roads or near egress points of farms and buildings, the proposed area of the ERA would disrupt normal agricultural business. On very large fields, it is not unusual for pesticide applications to take hours to complete. Preventing workers from using these roads or gaining access to farm buildings for such long periods of time would involve significant economic impacts. This is particularly true for large row-crop farms or forestry operations, where such roads may be the only access to thousands of acres where unrelated operations may be ongoing outside the proximity of any pesticide operations.

Worker entry restrictions after pesticide applications (§170.107): In addition to the ERA requirements, EPA is proposing restricted entry interval (REI) requirements that fully duplicate existing WPS regulations. Current regulations prohibit employers from sending workers into a treated area during the REI except under specific early entry exceptions (40 CFR 10.112(a)). If an employer sends a worker into a treated area under one of the specific early entry exceptions, the employer is required by current WPS regulations to provide that worker with personal protective equipment (PPE), assure that such worker follows precautions on the label, and provide water and decontamination supplies nearby for when the worker exits the treated area.

⁴ Soo-Jeong Lee, et al., 2011, “Acute Pesticide Illnesses Associated with Off-Target Pesticide Drift from Agricultural Applications: 11 States, 1998–2006,” *Environmental Health Perspectives*, 119 (8).

Oral and posted notification of worker entry restrictions (§170.109): The current WPS also includes requirements for posting and notification that are either oral or posted, unless the label specifies both.

- Subsection 109(1)(i) and (ii) would keep the option of oral warnings or posting of warning signs for products with labels containing REIs equal to or less than 48 hours for outdoor uses (farms, forests, and nurseries) or less than or equal to 4 hours for indoor uses (greenhouses). The proposed WPS revisions also would require posting, however, for applications of all products with REIs greater than 48 hours for outdoor uses and products with REIs greater than 4 hours for indoor uses. Double notification (oral and signs) is required if specified by product labels, and some exceptions are identified in subsection (2).
- In subsection 109(b)(1)(ii), EPA would require warning signs to be posted prior to but no earlier than 24 hours before the scheduled application of the pesticide. For reasons we expressed earlier, we are concerned that this posting requirement would be burdensome for employers (and their contracted applicators) should they encounter undesirable wind conditions, inclement weather, equipment malfunctions, or other unforeseen conditions that interfere with planned scheduling of pesticide applications. Were this Proposed Rule to be promulgated, we believe an exemption for such delays is warranted, such as, “unless weather or circumstances beyond the control of the applicator or agricultural employer delay the application.” Adding a provision recognizing the realities of weather and other unforeseen contingencies is a reasonable way to avoid unnecessary technical violations that provide no additional regulatory or worker protections.
- In subsection 109(b)(1)(iv), EPA would require that “under no circumstances shall the signs remain posted and uncovered when worker entry is permitted...” Were the Proposed Rule to be promulgated, we believe EPA should delete the requirement that signs be removed 3 days after application or REI ending. This provision would establish the possibility of a potential technical violation without adding any regulatory benefits or protections for workers or handlers. Agricultural employers will be eager to remove posted signs to allow worker reentry and return to agricultural operations.
- In subsection 109(b)(2), EPA proposes to change posting sign language from “KEEP OUT” to “ENTRY RESTRICTED.” Were the Proposed Rule be promulgated, we believe this provision should be deleted. The wording changes will lead to confusion in the regulated community and reprinting the signs will add unnecessary costs to operations nationwide.

Training requirements for handlers (§170.201): Before any handler (including applicators) performs any handler activity involving a pesticide product bearing a label requiring compliance with the WPS, this section would require the employer of the handler to ensure that the handler has been trained in accordance with this section within the last 12 months, with some exceptions noted in subsection 201(b).

- Should this Proposed Rule be promulgated, we believe subsection 201(c)(1) should be revised to require the trainer be available only during the training and Q&A sessions,

rather than continuously or when an approved video or other media is being used to facilitate training.

- We are concerned that subsection 201(c)(2) is excessively granular, and includes topics at subsections (c)(2)(iv), (vii), and (ix) that are fully covered in applicator certification training and in non-certified applicator supervision requirements. Should this Proposed Rule be promulgated, we believe these items in subsection 201(c)(2) should be deleted.
- We are concerned also that subsection 201(c)(3), requiring the suspension of applications when “other persons” are in the treatment area, is redundant of current WPS requirements that prohibit pesticides to contact any person.
- Furthermore, were the Proposed Rule to be promulgated, we believe the provisions in subsection 201(d) should be deleted. This extensive recordkeeping requirement for proof of training creates an unnecessary burden and expense for the agricultural producer without any identifiable increased benefits or protections. The current requirements in the existing rule are adequate, and adding this recordkeeping requirement creates the opportunity for technical violations without a demonstrated improvement in actual protections for workers and handlers.

Knowledge of labeling, application-specific, and establishment-specific information for handlers (§170.203): We are concerned that the requirement in subsection 203(a)(2) would require handlers (*e.g.*, aerial applicators) to have access to product “labeling” at all times during handler activities. Were this Proposed Rule to be promulgated, we believe EPA should better distinguish between types of “handler activities” and focus such requirements for mixing and loading sites. We also repeat here our previously-stated concerns about EPA’s confusion between “label” and “labeling.” For example, in subsection 203(a)(1), the Proposed Rule describes requirements for employers of pesticide handlers, ensuring the handler either has read the pesticide product “labeling” or has been informed, in a manner the handler can understand, of all “labeling” requirements and use directions necessary for proper use of the pesticide. Also, in subsection 203(a)(2), EPA states that the handler employer must ensure the handler has access to the product “labeling” at all times during the handler activities. Were this Proposed Rule to be promulgated, EPA should replace “labeling” wherever it occurs with “label.”

Requirements during applications to protect handlers, workers and other persons (§170.205): We are concerned that in this section EPA expands current worker protections to cover “other persons.” In subsection 205(a) the handler employer and the handler himself must ensure that no pesticide is applied so as to contact, directly or through drift, any worker *or other person*, other than an appropriately trained and equipped handler located on the establishment. Under subsection 205(b), the handler performing the application must immediately stop or suspend a pesticide application if any worker *or other person*, other than an appropriately trained and equipped handler, is in the treated area or ERA. Were the Proposed Rule to be promulgated, we believe EPA should delete the proposed requirement to provide federal FIFRA protections to “other persons.” Not only is this beyond the scope of the WPS, but it sets up handlers and handler employers

for unwarranted federal legal challenges by any person seeking to interrupt normal farming activities.

Personal protective equipment (§170.207): This section focuses on handler and employer responsibilities for provision and use of PPE, but there are several provisions that should be clarified, should this Proposed Rule be promulgated.

For example, subsection 207(a) would require that any person who performs handler (including applicator) activities involving a pesticide product bearing a label requiring WPS compliance must “use the clothing and personal protective equipment specified on the pesticide product label for use of that product.” However, in the next paragraph (subsection 207(b)), EPA states: “For the purposes of this section, long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks are not considered personal protective equipment, *even though pesticide labeling may require such work clothing to be worn.*”

- In subsection 207(b)(5)(iii), EPA would require contaminated glove liners to be disposed of in accordance with federal, state or local regulations. We question whether such disposal regulations actually exist.
- In subsection 207(b)(9) we support the use and proper fit testing of respirators, but we have serious concerns with the practicality and cost of aspects of this proposed requirement. For example, in subsection 207(b)(9)(iii) EPA would require employers of handlers to “provide handlers with a medical evaluation by a physician or *other licensed health care professional* that conforms to the provisions of 29 CFR 1910.134 to ensure the handler’s physical ability to safely wear the respirator specified on the product labeling.” The handler employer must maintain for 2 years, on the establishment, records documenting the completion of this medical examination, among other information. We believe EPA should define what a “licensed health care professional” means. We are concerned that the requirement for a medical examination by a physician would be prohibitively burdensome and costly. Finding physicians with the requisite knowledge of respirator use dynamics in many rural areas where farms are located will be difficult. EPA’s cost estimate of \$54 annually per agricultural establishment seems excessively low given the costs of a medical professional’s time, even when considering possible contributions from insurance. The Proposed Rule adopts the Occupational Safety and Health Act (OSHA) requirements for respirator use by handlers (*e.g.*, fit testing, medical evaluation, and training). For the reasons we describe above and others, meeting these requirements will not be a simple task for handler employers and will trigger additional costs. The OSHA standard requires the use of respirators certified by NOISH; if EPA adopts this requirement the Agency needs to document and justify the cost of purchasing certified respirators.

Exemptions (§170.301): We generally agree with the exemptions of this section, although we have concerns with some subsections:

- In subsection 301(a)(2), EPA would require the owners of agricultural establishments to provide all of the applicable protections required by the WPS for any employees *or*

other persons on the establishment that are not members of the immediate family.

Were the Proposed Rule to be promulgated, we believe the reference to “other persons” should be deleted here and wherever else it occurs in the proposal.

- We are concerned also that EPA intends the exemptions at subsection 301(b) for certified crop advisors to not extend to employees trained and directly supervised by these professionals (*Preamble: Section XVIII(b)*). Such employees are a vital part of the crop and research consulting business and implementation of Integrated Pest Management (IPM) programs. They are personally trained by certified or licensed crop advisors, made aware of the precautions required, and supervised as they conduct their duties. Under current WPS certified crop advisors must make specific determinations regarding the appropriate PPE, decontamination and safe method of conduct for those working under their 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. Were the Proposed Rule to be promulgated, we urge EPA to retain the current exemption for employees who are under the direct training by and supervision of a licensed or certified crop advisor.

Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval (§170.307): We agree with the intent of this section dealing with responsibilities of agricultural employers for protection of workers entering a treated area during an REI, although the PPC is concerned the requirement of subsection 307(f) would make it a federal requirement to ensure protections sufficient to fully “prevent heat-related illness...” when workers are wearing PPE at such times. Avoiding such heat-related illnesses is important, especially for workers entering a treated area during an REI, but the incidence may be very dependent on climate changes and individual worker’s sensitivities to heat stress. Were the Proposed Rule to be promulgated, we recommend that EPA acknowledge this degree of subjectivity in a manner that lessens the likelihood of unanticipated legal jeopardy for agricultural employers while still protecting workers entering treated areas during a restricted-entry interval subject to §170.307.

Exceptions to personal protective equipment requirements specified on pesticide product labeling (§170.307): This section describes exceptions for requirements to wear various types of PPE and the use of closed-systems for mixing and loading of pesticides. As EPA is well aware, closed systems significantly reduce exposure to pesticides during mixing and loading, provided they are used properly, and therefore their use can also reduce the need for certain types of PPE. EPA should encourage and facilitate the use of these systems, but, unfortunately, the proposed WPS rule is impractical and overly prescriptive. The proposal would require changes that are logistically challenging to implement and involve considerable cost and recordkeeping, which would actually discourage their use.

Were the Proposed Rule be promulgated, we recommend subsections 307(d)(2) and (3) be deleted. They provide exhaustive design standard detail that is not readily amenable to implementation or compliance inspections by EPA or states. These sections should be

replaced by a performance standard that requires that exceptions to PPE for closed systems be based on designs, maintenance, and operation in a manner to ensure workers or handlers are not exposed to the pesticide they contain. In addition, the reference in subsection 307(d)(2)(i) to “any person” should be deleted.

We are also concerned with EPA’s proposed requirements in subsection 307(f)(1) for use of gloves when entering or leaving the cockpit of aircraft used in aerial application; in subsection 307(f)(2) for requirements for aerial applicators occupying an open cockpit; and in subsection 307(f)(3) for requirements for PPE substitutions in enclosed cockpits. We support the comments and recommendations of the National Agricultural Aviation Association regarding subsection 307(f).

Exception to immediate training requirements for workers (§170.309): EPA proposes that an agricultural employer may allow or direct a worker to perform certain tasks in and around a treated area on an agricultural establishment for up to 2 days without training the individual in accordance with §170.101, provided the agricultural employer ensures all of the conditions of this section are met. We do not support shortening the 5-day grace period of current WPS (60 FR 21944; May 3, 1995). Employers have many legal obligations related to hiring new employees, and pesticide safety training is just one element. The grace period allows employers flexibility to hire groups of workers during very busy times and conduct their training (or verification of prior training) in a manner that is consistent with the number of trainers available, the number of new workers hired, the seasonal pressures of the crops and pests, and other obligations.

The members of the Pesticide Policy Coalition appreciate the opportunity to comment on EPA’s proposed revisions to the Worker Protection Standard, 40 CFR Part 170. We look forward to continuing to work with EPA, state agencies and the agricultural workforce on how to best modernize worker protection standards.

Sincerely,

The Pesticide Policy Coalition

Including the following members:

American Farm Bureau Federation

American Seed Trade Association

CropLife America

National Agricultural Aviation Association

National Alliance of Independent Crop Consultants

National Association of Wheat Growers

National Cotton Council

National Council of Farmer Cooperatives

National Potato Council

US Apple Association