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OPP Docket, Environmental Protection Agency Docket Center
Mail Code: 28221T
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: Docket ID No. EPA–HQ–OPP-2011-0184

To Whom It May Concern:

As New York State's largest general farm organization, representing approximately 25,000 members of all size farms and all types of commodities, New York Farm Bureau (NYFB) appreciates the opportunity to comment on the proposed rule, "Pesticides; Agricultural Worker Protection Standard Revisions."

Our farmers take the safety of their workers very seriously and many times farmers or other members of their family work alongside employees in handling and applying pesticides. While these products are valuable crop protection tools, we also recognize that they can pose risks and hazards if used improperly. We understand that a scientifically-based, reasonably implemented Worker Protection Standard (WPS) that is designed to guard against actual risks and hazards is appropriate for EPA to use in implementing the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and meeting its obligations under the law.

The proper use of pesticides and their safe handling is important to farmers and we would not be opposed to some specific provisions within the rule. However, we do have great concern that in general, this lengthy rule imposes a host of additional paperwork and legal obligations on farm employers without demonstrating an actual increase in protections. This rule will add a long list of workplace obligations, significantly increase paperwork obligations, expose farmers to unnecessary legal liability to third parties, increase costs for no identifiable benefit and require valueless and complicated changes in farm operations. Unfortunately, EPA has not demonstrated that these changes—which place a great burden on the farm employer—will actually result in benefits and additional protections for workers, which is why we are urging EPA to withdraw this rule.

Instead, should EPA identify actual problems with the current WPS that need to be addressed on farms, we strongly encourage the agency to work with Farm Bureau, farm producers and other stakeholders in developing real-world solutions that address these concerns without placing undue and ineffective burdens on farms.

As it stands, NYFB believes this proposal lacks quantifiable benefits to justify the additional demands on employers. In the preamble to the proposed rule, EPA states that "changes to the current WPS requirements are expected to lead to an overall reduction in incidents of unsafe pesticide exposure and to improve the occupational health of the nation's agricultural workers and pesticide handlers."

However, time and again in explaining the rule, the agency is unable to point to identifiable benefits. Here are three such examples:

1) *VII.A Shorten Retraining Interval for Workers and Handlers*
   EPA proposes to require more frequent training of workers (mandating training yearly instead of every five years) and states: "While EPA can estimate the costs of this proposed change, quantifying the benefits is more difficult….The agency concludes that the estimated costs are reasonable when compared to the anticipated benefits resulting from the additional training." (Federal Register, March 19, 2014, page 15460)

2) *IX.A. Pesticide-Specific Hazard Communication Materials*
   EPA proposes to require employers to maintain application information, SDS, and labeling for 2 years at an estimated cost of $3 million annually. Yet the agency says it "cannot quantify the specific benefits associated with this proposal." (Federal Register, March 19, 2014, page 15477)

3) *XVI.E. Respirators: Fit Testing, Training, and Medical Evaluation*
   EPA proposes to require handler employers to comply with the respirator fit testing, training and medical evaluation requirements set by OSHA at 29 CFR 1910.134. EPA estimates costs of $10.6 million yet states that it "cannot quantify the benefits associated with this proposal." (Federal Register, March 19, 2014, page 15500)

We maintain that until EPA demonstrates that these new requirements would provide actual improvement to health and safety, that placing additional legal obligations on employers is beyond the discretion of the agency provided by law.

NYFB also believes that EPA has significantly underestimated the cost, size and scope of this revised rule through a flawed economic analysis. In official comments provided by American Farm Bureau Federation, a detailed explanation of the shortcomings of EPA's analysis are noted and we support these comments while urging the agency to consider revising its Economic Analysis of the Proposed Agricultural Worker Protection Standard Revisions.

Concerns about specific provisions of the revised rule are detailed below, organized by the outline provided in the preamble to the published proposed rule.

VII. Training for Workers and Handlers

A. Shorten Retraining Interval for Workers and Handlers [Proposed §§170.101(a) and 270.101(a)]

EPA is proposing to mandate greater obligations on employers by shortening the training interval from 5 years to 1 year. While New York farmers are open to considering a shorter frequency of the training interval, an annual retraining interval is expensive for farmers and poses significant problems by taxing the network of available trainers in the state. Our farmers are open to considering a retraining interval that is demonstrated to result in both greater safety and information retention for workers. Annual training, if it is frustrating to workers who do not feel they are increasing their skills and knowledge, can lose the attention of workers and provide no additional benefits.

We encourage EPA to retain the existing retraining interval of 5 years until the agency is able to consult with state Departments of Agriculture and stakeholders in determining whether a

new retraining interval is appropriate and what that interval should be to provide the maximum benefit to workers and limit any unnecessary burden on employers.

B. *Establish Recordkeeping Requirements to Verify Training for Workers and Handlers [Proposed §§170.1010(d) and 170.201(d)]*

EPA has proposed to require agricultural and handler employers to keep records of all workers and handlers who receive pesticide safety training for two years on the agricultural establishment. Such recordkeeping would be extremely detailed, and employers would be required to provide to workers copies of the training record upon completion.

Worker Protection Standards and the agency's proposed revisions are both intended to provide protection to workers from the risks and hazards of exposure to harmful chemicals. This paperwork requirement provides no demonstrable worker benefits and appears only to be a mandate on employers intended to make life easier on enforcement agents. Instead, EPA should focus its efforts on quantifiable benefits to workers as paperwork requirements are not a substitute for actual worker safety and are not an appropriate measurement of whether acceptable training has been provided.

Furthermore, as detailed later in these comments, we strongly oppose allowing "authorized representatives" the right to request or demand such material as training records, whether such "authorized representatives" are designated either orally or in writing.

C. *Require Employers to Provide Establishment-Specific Information for Worker and Handlers [Proposed §§170.103 and 170.203(b)]*

EPA proposes to require employers to provide establishment-specific pesticide safety training for workers and handlers when they enter the establishment and before beginning WPS tasks. As a general matter, we believe such information is already provided in most instances and we would not object to the inclusion of such specifics in the WPS regulation.

D. *Establish Trainer Qualifications [Proposed §§170.101(c)(4) and 170.201(c)(4)]*

The proposed rule would modify existing requirements, most importantly by requiring trainers of workers to complete a pesticide safety train-the-trainer program approved by EPA or to be designated as a trainer of certified applicators by EPA or a state or tribal agency for pesticide enforcement. Notably, EPA would eliminate the automatic authorization of certified applicators and WPS handlers to train workers.

While this sounds like a reasonable proposal and NYFB supports having qualified individuals perform training, this part of the proposal is unnecessary given the current training scheme and will overtax our state's current network of qualified individuals to perform training. Additionally, EPA is not able to quantify any benefits that would be associated with this change or demonstrate the pesticide exposure has occurred due to an inadequate level of knowledge by current trainers.

In most cases in New York, training is provided through a video and many times a certified pesticide applicator serving as the "trainer" is present at all times and answers all questions by employees. Certified applicators are kept updated on pesticide information and safety

and have to receive training and education themselves annually in order to keep their license. These individuals have already received training and demonstrated sufficient knowledge in chemical handling and application. Given their rigorous license requirements, they are more than qualified to serve as a trainer for other workers.

We oppose elimination of the existing provisions which permits certified applicators and WPS handlers to train workers. This change would significantly reduce the number of individuals available to conduct training, especially when EPA is proposing more frequent training, and would place even greater strain on the existing system.

E. Expand the Content of Worker and Handler Pesticide Safety Training [Proposed §§170.101(c)(3) and 170.201(c)(3)]

EPA proposes to expand the content of information provided workers and handlers. As a general matter, we agree that workers and handlers should be provided all appropriate information that will tend to support a safe work environment, instill proper handling and application methods, and guard against pesticide exposure to workers and handlers.

NYFB does not object to EPA evaluating what information is provided to workers and handlers and amplifying on that information where and when that is appropriate. We urge the agency, however, to balance the need for providing all necessary and appropriate information with the compelling need to disseminate such information in a manner and form in which it can be absorbed and utilized. EPA provides a long list of information that would have to be included in trainings, but expanded training will have no benefit if it is not prepared and presented in a way that is useful and impactful on workers.

NYFB strongly encourages the agency to make the following modification to the information provided in the training. One bulleted item in handler training is "environmental concerns, such as drift, runoff, and wildlife hazards." We feel that information on this matter should be specific to the functions of FIFRA and not be an open invitation for any handler to register general "environmental concerns" that have little to do with the purposes of the WPS or FIFRA. The handler training should be focused on worker safety and protection and other concerns have other avenues through which to be addressed.

We do support the agency's decision not to include contact information for legal representation in training programs and strongly urge that such a matter not be included in any final regulation. It is not appropriate for the agency or individual trainers to make recommendations of this type. We also believe it is reasonable to include notification about minimum age restrictions and notification requirements for early-entry workers.

F. Retain Audiovisual Presentations as Permissible Methods of Pesticide Safety Training [Proposed §§170.101(c)(1) and 170.201(c)(1)

The agency is proposing to retain the use of audiovisual training tools, coupled with a requirement for the trainer to be present during the training. We support the retention of audiovisual material as a training method. In New York, this is the predominant method of training used and we believe this is a thoroughly effective way of ensuring the consistency and efficacy of the materials, given that it must be approved by EPA. Farmers and the organizations that are helping to provide the training look forward to EPA assistance in

updating these audiovisual training tools in a way that will ensure the information is presented in a way to make it effective and easily retained by workers.

G. Eliminate Exception to Handler Training Requirements

Under existing regulations, an employer is not required to provide handler training to an individual performing handler tasks if that person has already met the training requirements under the Certification of Pesticide Applicators regulation. EPA is proposing to eliminate this exception. As a general matter, we agree that individuals performing handling duties should be properly trained. It would seem that this gap could be closed either by modifying the existing regulations found in 40 CFR part 171 or in the WPS. We would recommend, again, that when addressing identified deficiencies in the existing regulatory scheme EPA do so in a way that is cost-effective, imposes the least possible burden on the existing training infrastructure, and makes it as easy as possible to maintain well-trained personnel who can support ongoing farm operations.

VIII. Notifications to Workers and Handlers

A. Posted Notification Timing & Oral Notification [Proposed §§170.109(a)(1)(i) and 170.109(a)(1)(ii)]

EPA is proposing to require warning signs where a restricted entry interval (REI) is greater than 48 hours and to allow an option of an oral warning or posted notification for products with an REI of 48 hours or less.

While safety remains a top concern and farmers are serious about communicating hazards, based on the evidence in the docket and the experience of our farmers, we believe the agency proposal is overly broad and expensive. EPA clearly states it "cannot quantify the benefits associated with this specific proposal" (Federal Register, March 19, 2014, page 15473). Without demonstrating that this change will have an actual benefit on worker safety, we believe that the agency moving forward with this provision amounts to an unjustified mandate on growers.

Instead, we would support the agency examining whether it is possible to enhance oral warnings to employees and would be willing to work with the agency and other stakeholders in evaluating this. For example, instead of requiring written postings for REIs of longer than 48 hours, it may be possible to reinforce oral warnings in a meaningful way so that workers are not unreasonably exposed to pesticides during and after application. We think this would be a more sensible, practical and economical method of proceeding, instead of the proposal outlined by EPA.

We do agree with EPA's decision not to proceed with a requirement for recordkeeping of oral notifications as this would be a huge paperwork burden on farmers.

B. Locations of Warning Sign [Proposed §170.109(b)(3)(ii)]

Existing WPS regulations require warning signs to be posted where they are visible from all usual points of worker entry to a treated area, the corners of the treated area or an area affording maximum visibility. EPA proposes to supplement these locations by requiring

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.

If there was evidence that this additional posting was necessary, we would not be opposed to this change, but without any data to back up this change, NYFB believes that the existing requirements in the WPS regulation adequately deal with notification to workers and we do not believe this change is necessary or would add materially to worker safety. It adds unnecessary costs for employers and should be eliminated from any final WPS rule.

C. Warning Sign Content [Proposed §170.109(b)(2)]

EPA proposes to revise existing regulations by replacing the phrase "Keep Out" with the phrase "Entry Restricted" and by changing the red shape on the sign from a circle to an octagon.

NYFB does not have any objection to these changes.

IX. Hazard Communication

A. Pesticide-Specific Hazard Communication Materials – General [Proposed §170.11(b)]

EPA proposes to require (in addition to existing requirements related to the date, time and location of application, length of REI and identity of pesticide products) that:

- Agricultural and handler employers make available to workers and handlers SDS and the labeling or pesticides used on the establishment that require WPS compliance;
- That these employers maintain the SDSs and pesticide labeling on the establishment for 2 years from the date of pesticide application;
- That not only employees but authorized representatives of workers or handlers would be permitted access to this information during normal business hours.

In §170.5 of the proposed rule, "authorized representative" is defined as 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."

In general, we do not object to an appropriate period of record retention, but do believe these requirements should be minimal, require limited time on the part of the employer to maintain and be non-intrusive. We could not support any retention requirement longer than the two years proposed by the agency. Additionally, these should not be put in place merely to make life easier on enforcement agents while becoming overly burdensome to farmers. Record retention requirements should advance the purpose of the WPS in protecting workers.

Keeping all SDS and pesticide product labeling on hand in paper form for two years can become very onerous on storage space and when labels are updated or products are discontinued, this can create filing challenges. Therefore, farmers in New York ask the agency to ensure that this information continues to be available online, even when labels

are updated, for at least the same period of time as farmers are required to keep records. This would potentially speed access to this important information in the event of an incident or concern.

Specific Concerns About Use Of "Authorized Representative"

NYFB has major concerns about the agency's proposal to open up such records to "authorized representatives" of workers and handlers. We strongly oppose this provision of the revision and request that EPA withdraw it. <u>All references to "authorized representatives" should be completely dropped from the WPS and we cannot emphasize this strongly enough.</u>

The agency uses the term "authorized representative" when in fact no such relationship to an employee or handler is demonstrable, much less established. The agency's own proposal defines an "authorized representative" as a "person designated by the worker or handler, orally or in writing…" Farmers have no objection to providing workers with safety and product information, but extending this to someone who self-identifies as an "authorized representative" does not ensure greater worker safety and violates a farmer's legal rights.

With a flimsy "oral" designation of an "authorized representative," EPA sets up a scenario that is ripe for abuse and is completely unenforceable. This places farm employers at the mercy of any individual that can walk up to the farm, claim without evidence to have been "orally" designated by a worker who may or may not currently work on the farm, and demand business-sensitive information. As written, the farmer is compelled to provide this information to the individual and has absolutely no recourse or ability to request verification. This is far beyond the authority granted the agency in the statute and does not speak to the purpose of WPS to add to the protection of workers.

While we work with many groups in New York that represent and assist workers in everything from education to child care, there are many instances of the abuses of self-designated "worker advocates." Not all of these individuals have the workers' best interest at heart and are instead working to advance their own agendas. EPA should not support or encourage this type of subversive agenda advancement on farmers under the guise of better protecting worker health and safety.

In addition to violating a farmer's rights, this provision undermines EPA's own system of protecting public health and safety through a rigorous registration process and the legitimacy of FIFRA. This part of the provision has nothing to do with worker safety.

We reiterate that NYFB strongly urges EPA to completely drop all references to "authorized representatives" from the WPS.

B. Pesticide Application information – Content and Timing [Proposed §170.11(b)]

EPA proposes to increase the amount of information to be kept in relation to pesticide applications, requiring employers to record the specific crop or site treated, the start and end dates and times of the application, and the end date and duration for the REI. Employers would be required to record the information no later than the end of the day of the application, which is a revision to existing requirements.

While the proposal increases obligations on employers, in fact existing regulations already require information related to the EPA registration number, product name, active ingredient, time and date pesticide is to be applied, and the REI for the pesticide. We believe the existing requirement amply fulfills the needs of the law and there is no need for greater information to be filed; indeed, EPA has identified no benefit attaching to this increased mandate on employers.

Instead, NYFB would support maximum flexibility for employers in recording, completing, and maintaining information required by regulation. While farmers diligently attempt to record this information in a very timely manner, the needs of farming, frequently dictated by weather, may at times make end-of-day recording impractical.

C. *Pesticide Application Information – Location and Accessibility [Proposed §170.11(b)]*

EPA proposes to eliminate the requirement for displaying pesticide application information at a central location and require employers to maintain pesticide application information on the establishment, while making such information available to workers, handlers or their authorized representatives upon request.

NYFB supports this change. However, as detailed earlier in these comments, we strongly object to provisions allowing "authorized representatives" access to this information and urge that this portion of the proposal be eliminated.

D. *Pesticide Application Information and Pesticide-Specific Hazard Communications Materials – Retention of Records [Proposed §170.11(b)(2)]*

EPA proposes to require employers to retain pesticide application and related pesticide-specific hazard communication information for two years from the date of the end of the REI for each product applied. This would replace the existing requirement for employers to maintain such information until 30 days after the REI expires.

We believe the two-year requirement goes beyond what is necessary and EPA has not demonstrated why this particular time period is recommended. We believe a one-year record retention requirement should be sufficient. We do support the change from requiring a central display location to a requirement that merely requires the information be maintained on the establishment as noted above.

X. Information Exchange Between Handler and Agricultural Employers [Proposed §§170.9(k) and 170.13(i)-(j)]

EPA would impose two additional requirements related to the information exchange between handlers and agricultural employers: (1) the agency would include the location of the proposed "entry-restricted areas;" and (2) the agency would require the handler employer to include the proposed start and estimated end times for the application; EPA would require handler employers to provide changes to pesticide application plans to agricultural employers within 2 hours of the end of the application (changes to the estimate application end time of less than 1 hour would not require notification).

In considering this provision, EPA should be mindful of the dynamics of farming operations and the need to respond to pest infestations, wind conditions, changing weather patterns, timing of harvest, and the economic impact all of these factors can have on a farmer's livelihood. We agree that pesticide applications should be made in conformity with the law and regulations and must be done in a manner to protect workers. We are uncertain whether the changes proposed by the agency would in fact reduce worker pesticide exposure and are unaware of any documentation in the docket that supports this belief held by the agency.

While employers and employees strive to maintain steady communication on the farm, especially when related to pesticide application, and employers should know when application plans change, a 2-hour standard may be too rigid as applied to real-world situations occurring on the farm. Should EPA go forward with imposing such a requirement, we believe it may be more appropriate to have a standard that reflects actual conditions on the establishment. Thus, instead of a 2-hour standard, it may be more appropriate to have a handler notify an agricultural employer of a change in scheduled application at the soonest practicable time, rather than a specific timeframe. This would be responsive to both the on-the-ground needs of the farming operation and the goal of protecting worker safety.

XI. Handler Restrictions

A. Suspend Application [Proposed §170.205(a)-(b)]

EPA would revise the existing WPS to require handlers to cease application if they observe any person other than a trained and properly equipped handler to be present in the treated or entry-restricted area.

Our farmers are comfortable with suspending application when an unauthorized/untrained individual is in the treatment area, however the language of the provision leads to some confusion and does not address resuming the application once suspended.

The proposed text in §170.205(b) reads: "…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 entry-restricted area." We are concerned that the language proposed by the agency would confuse, rather than clarify, employer responsibilities and request the agency clarify this before including in the WPS revision.

The regulatory wording is unclear about whether "stopping" or "suspending" are two distinct actions. If an applicator "suspends" operations, can they be re-started once the person in the designated area is no longer present? How is this distinct from "stopping" an application? Once a person in the area is no longer present, may the application be resumed? There is no language in the regulation to permit this resumption. Visual confirmation that an individual is no longer present in the treatment area should be sufficient for resuming application immediately.

The agency further asks for comment on the question: Will this proposal, in combination with the entry-restricted requirements proposed in Unit XIV, effectively reduce worker exposure to spray drift? NYFB asserts that the problems posed by potential spray drift are addressed by the pesticide label and EPA should respect its own process for registering and

regulating products and not seek to introduce unrelated elements into the worker protection standard. We respect the registration process and believe any issues related to spray drift should be handled through the pesticide label rather than through a much more complicated and unclear process outlined in the WPS.

B. Establish Minimum Age of 16 for Handling Pesticides [Proposed §§170.9(c) and 170.13(c)]]

EPA proposes to prohibit persons younger than 16 years of age from handling pesticides. This would not affect immediate family members.

NYFB believes the existing standards promulgated under the Fair Labor Standards Act (FLSA) appropriately protect younger workers and are the appropriate mechanism for determining standards for these workers. As EPA notes in its preamble, FLSA already establishes 16 as a minimum age for persons using toxicity category I and II pesticides in agricultural employment.

Should there be any effort to alter or further restrict employment-related activities, they would best be considered under changes to the regulations implementing the FLSA. In fact, the U.S. Department of Labor considered extensive revisions to the employment of youth in agriculture, but opted not to make any changes to its regulations, stating that it would not undertake any such effort for the duration of the Obama Administration. EPA should respect this decision and defer these types of standards to the appropriate regulatory agency, the U.S. Department of Labor.

XII. Restrictions for Worker Entry into Treated Areas [Proposed §170.303]

A. Establish Minimum Age of 16 for Workers entering a Treated Area under an REI

EPA proposes to establish a minimum age of 16 years for workers entering a treated area for early-entry activities while an REI is in effect.

As explained above, we believe the most appropriate venue for considering age-related employment is in the context of the labor laws administered by the U.S. Department of Labor.

B. Requirements for Entry During an REI [Proposed §170.305]

EPA proposes several revisions to employer obligations when workers are sent into a treated area during an REI. Employers must:

(1) Inform workers sent into a treated area while the REI is in effect of the specific exception under which they would enter;
(2) Describe the tasks permitted and any limitations required under the exception; and
(3) Explain the personal protective equipment required by the labeling.

Employers would be obliged to:

(a) Create a record of the oral notification;
(b) Obtain the signature of each early-entry worker acknowledging the oral notification prior to the early entry; and
(c) Maintain the record for 2 years.

We agree that early-entry workers should receive all appropriate information to protect themselves while carrying out their tasks. In the event of an exposure, it would be important for a record of the pesticide applied to be readily available. However, our farmers note that they only occasionally need workers to enter an REI early and the obligation to create, sign and retain records of an oral notification is onerous and unnecessary. Again, this provision seems to be more geared toward easing the task of enforcement personnel than actually assuring worker protection. We recommend EPA remove the requirement for records of oral notification.

C. *Clarify Requirement for Decontamination Supplies for Workers Entering a Treated Area Under an REI [Proposed §170.305(j)]*

EPA proposes to alter the existing regulation, which requires employers to have "a sufficient amount of water" for worker decontamination to having at least 3 gallons of water available per worker for decontamination.

NYFB believes the existing language on a "sufficient" amount of water adequately addresses this problem. To alter the requirement to a specific quantity may inadvertently result in technical violations when exactly 3 gallons is not available due to evaporation, use as drinking water, an accidental spill, etc. We do not support the change altering the requirement to a specific amount of water and recommend retaining the current provision.

D. *Exception to the General Prohibition Against Sending Workers Into a Treated Area Under an REI*

i. Clarify Conditions of "No Contact" exception [Proposed §170.303(a)]

The proposal would state that activities reasonably expected to involve contact with treated surfaces cannot be no-contact activities even if contact is limited or mediated through the use of PPE.

We would disagree with EPA's interpretation of this provision. If a worker is appropriately using PPE, we do not believe the characterization of the work should be "no contact" because in fact the medium of the PPE prevents contact. Therefore, the regulations should reflect that there is in effect no contact due to the use of PPE.

ii. Limit "agricultural emergency" exception [Proposed §170.303(c)]

The proposal would:
(1) Limit to EPA, a state department of agriculture or a state or tribal lead agency the agency that may declare an agriculture emergency; and
(2) Limit the amount of time a worker is permitted to spend in an area treated with a double-notification product to no more than 4 hours in any 24-hour period during an agricultural emergency.

We recommend that, before implementing changes in this provision, EPA consult with state departments of agriculture and agricultural stakeholders to evaluate the potential impact and how the change would enhance worker safety.

iii. Codify "Limited Contact" and "Irrigation" exceptions [Proposed §170.303(d)]

EPA proposes to incorporate the "limited contact" and "irrigation" exceptions into the rule; remove the word "unforeseen" from the irrigation exception; and prohibit early entry under the both exceptions into areas treated with a pesticide requiring double notification.

We do not object to these changes.

E. Expansion of Entry-Restricted Areas [Proposed §170.105(a)]

EPA proposes to establish entry-restricted areas for farms and forests that would extend beyond the treated area itself. These areas could range from 25 feet for ground applications and 100 feet for aerial applications.

NYFB is very concerned with this provision and urges the agency not to promulgate this measure in any expected revision of the WPS. First, we believe the agency has not established the need for this provision or outlined problems that currently exist that this provision would address. Second, despite the agency asserting that this change would have a negligible cost, farmers do not agree that there will be no cost impact resulting from expanding restricted areas. And finally, current regulations already require that applicators apply pesticides in a manner that prohibit contact with workers or other persons. EPA's registration and labeling program deal with the issue of drift and proper application of pesticides and should adequately address any concerns about safety that this provision purports to address.

Farmers believe this provision would be very impractical to implement. This requirement would be onerous on employers and there is no evidence it will provide additional protections beyond those already in current law and regulation. Therefore, this proposed revision should not be imposed.

XIII. Display of Basic Pesticide Safety Information

A. Location of Basic Pesticide Safety Information Display [Proposed §170.11(a)(3)]

EPA proposes that employers display pesticide safety information at decontamination sites in addition to a place on the agricultural establishment where workers and handlers are likely to pass by or congregate.

NYFB would not object to this provision, subject to the considerations articulated below.

C. Content of Basic Pesticide Safety Information Display [Proposed §170.11(a)(1)]

The agency proposes to broaden the content of the safety information to include additional emergency medical information and to include contact information for the state or tribal regulatory agency for pesticide enforcement.

On the surface this is a reasonable provision and NYFB does not object to updating and providing relevant information to employees. However, we do not believe employers should be vulnerable to spurious reporting of alleged violations or be open to harassment from workers or others who have a bias against agriculture or pesticides. Should the agency move forward with this provision, we believe it should carefully monitor any reports of alleged violations and work with state agencies to monitor whether such reports are well-founded and whether this particular initiative is being used (or abused) by others as a means of pursuing agendas unrelated to worker protection.

XIV. Decontamination

A. Clarify the Quantity of Water Required for Decontamination [Proposed §§170.111(b) and 170.209(b)]

EPA proposes to require that employers must provide 1 gallon of water per worker for routine decontamination and 3 gallons of water per handler for routine washing and emergency. EPA states that this merely codifies existing EPA policy interpretations of WPS policy.

As explained above, we believe that adopting language that incorporates a specific amount of water may re-direct compliance from actions that are clearly focused on worker safety to merely technical considerations. We do not support specifying an exact amount of water.

Additionally, when using a large number of workers, it can quickly become impractical to move such large quantities of water around a farm. Instead, we encourage the current provisions to be maintained.

B. Eliminate the Substitution of Natural Waters for Decontamination Supplies

The agency proposes removing the provision that employers can substitute clean, natural waters from springs, streams, lakes or other sources for contained water supplies at decontamination sites.

NYFB shares the agency's desire to assure that workers are adequately protected from pesticide exposure, but we see this as eliminating a provision that is designed to protect workers. It is confusing that the agency in one passage claims that "a negligible number, if any employers would be impacted by this proposal" and yet, in the next sentence, admits that it "has no data on the number of employers that may use this option." In practice, natural waters may offer closer and more easily accessible decontamination waters than the WPS already provides for at vehicular access points. In the absence of any data, we would strongly advise the agency not to embark on withdrawing a provision that is designed to protect workers. We urge the agency to discard this provision as undermining the intent of improving worker protection.

C. Requirements for Ocular Decontamination in Case of Exposed Pesticide Handlers [Proposed §170.209(d)]

EPA is proposing to require that at permanent mixing and loading sites handler employers must provide clean, running water sufficient to provide at a minimum 1.5 liters per minute for 15 minutes for handlers to use for eye flush purposes in the event of an ocular pesticide exposure. EPA estimates little cost associated with the proposal because it assumes most permanent sites are already plumbed and water is available.

NYFB urges EPA to assure that, should it move forward with a final regulation, any such requirement applies only to permanent mixing and loading sites. Because of the nature of agricultural activities, there may be some mixing and/or loading that takes place at sites closer to actual field operations; these would not necessarily be permanent mixing and loading sites and should not come under the requirement for running water (although such sites would be required to have sufficient supplies available in case of ocular decontamination).

D. Showers for Handler Decontamination

EPA has not proposed this provision, but farmworker advocacy organizations have requested that EPA require employers to provide showers for handlers to facilitate decontamination at the end of the work day.

NYFB supports EPA's decision not to include this requirement in the revision. It is questionable how many workers would actually use these showers at the end of a work day and as the agency notes, the costs associated with this proposal are staggering ($22.7 billion, not including future costs of maintenance). We do not believe the benefits of such a requirement would come remotely close to justifying its imposition.

XV. Emergency Assistance [Proposed §170.9(f)]

EPA is proposing to modify its requirements for emergency assistance by proposing to change "prompt" to within 30 minutes of learning of the exposure. EPA also will require the employer to provide to the worker or handler or to treating medical personnel the SDS and pesticide label or all the pertinent information in an alternate form.

We are very sensitive to the issue EPA wishes to address and support helping employees as quickly as possible, but we caution the agency not to adopt too rigid a position. We fear that the 30 minute time frame is more useful to enforcement personnel looking for a guideline for the employer's reaction, but "prompt" might in fact require more expeditious treatment.

At the same time, there might be some areas on a farm where vehicular and cell phone access (in some parts of New York, cell service is still spotty at best) are difficult and quick response by the employer may fall outside the 30-minutes timeframe. These conditions could make it difficult to provide a worker and/or medical personnel the appropriate SDS or pesticide label within 30 minutes, through no negligence of the employer and through their best efforts.

We are concerned this provision may simply set up a scenario where enforcement personnel can find employers out of compliance when the employer diligently attempted to ensure the

safety of the employee and comply with the regulation. So although we are sensitive to the agency's concerns, we believe the existing requirement of "prompt" is an appropriate standard and we believe it provides enforcement personnel the discretion to judge an employer's response in a given situation and under a given set of circumstances.

XVI. Personal Protective Equipment

A. Chemical-Resistant PPE [Proposed §170.207(b)(1)]

EPA is proposing to re-define 'chemical resistant' to mean that the personal protective equipment (PPE) must be identified by the manufacturer as chemical resistant.

NYFB has no comments on this provision.

B. Closed Systems [Proposed §170.307(d)]

EPA is not proposing to mandate the use of closed systems, but would require that for any operation using a closed system, that system must meet the standards of the California closed system as outlined in the Director's Memo (with exceptions). In addition, the proposal establishes requirements for use of a closed system under which a handler employer:

(a) Must ensure that the handler receives training on use of the system;
(b) Must perform maintenance according to manufacturer's written instructions; and
(c) Must maintain a record of all maintenance for 2 years.

The proposal would retain the existing requirements that:

(1) Label-mandated PPE must be immediately available for use in an emergency;
(2) Handlers must use protective eyewear for closed systems that operate under pressure; and
(3) A respirator must be worn if required by the label.

While in principle NYFB has no objection to encouraging the use of closed systems and believes that they can be appropriate for particular operations that might opt for such a system, we do have concerns that EPA may be deferring excessively to a single state approach and not engaging in its own, independent efforts to evaluate how such systems, and any exception to the PPE standard, might work.

We believe EPA and the agriculture community would be better served if the agency conducted its own independent analysis to decide upon the most appropriate approach. One of the difficulties is identified by the agency itself, when it notes that it will "consider changes to California's standard and the supporting rationale when developing a final standard for closed systems in the WPS." This deference to rulemaking by a single state that will be monitored and potentially adopted by the Federal government for all 50 states is inappropriate. All members of the regulated community should have the opportunity to see and evaluate what the agency is proposing, and how it is attempting to implement it, without having to wait for changes that might occur in one state capital.

We strongly encourage EPA not to move forward on this approach without an independent, stakeholder-driven process in which all parties have the opportunity to share their perspectives.

C. Contaminated PPE [Proposed §70.207(d)(2)]

EPA proposes to require employers to render unusable contaminated PPE before it is disposed.

NYFB does not object to this provision but questions its usefulness and necessity.

D. Eyewear Protection for Open Cockpits [Proposed §170.307(f)(2)]

Current WPS stipulates that pilots applying pesticides from an open cockpit aircraft may wear a "visor." EPA will amend this to stipulate that in lieu of label-required eye protection a pilot may substitute a helmet with the face shield lowered as a substitute for the label-required eye protection.

We have no objection to this proposal.

E. Respirators: Fit Testing, Training and Medical Evaluation [Proposed §170.207(b)(9)]

The rule would require handler employers to comply with the respirator fit testing, training, and medical evaluation requirements set by OSHA whenever a respirator other than a dust or mist filtering mask is required by the labeling. NYFB has serious questions and concerns about this proposal and would recommend that the agency withdraw it. Our concerns are outlined below:

1. Medical exams can be extremely difficult to obtain in some rural areas of New York. Physicals alone may take months to schedule due to an overtaxed medical delivery system in these areas. While the health of workers is important to employers, this requirement could seriously delay the ability of a worker to begin his duties and severely impact the farmer's ability to use crop protectant tools. Medical examination requirements are an onerous addition to this provision and EPA should consider the difficultly this will provide some employers.

2. A review of the applicable section of the Code of Federation Regulations shows that the OSHA standard "applies to General Industry, Shipyards, Marine Terminals, Longshoring and Construction." Can a system developed for these industries be applied or easily transferred to an agricultural setting? We ask EPA if this is truly the appropriate standard.

3. The agency states that it will require handler employers to comply only with the "respirator fit testing, training and medical evaluations requirements set by OSHA at 29 CFR 1910.134." Yet the regulatory language itself is much broader. At the three applicable sections in the proposed rule (i.e., proposed §270.207(b)(9)(i) – (iii)) it reads that the fit-testing, training and medical evaluation must be accomplished "in a manner that conforms to the provisions of 29 CFR 1910.134." We believe this overbroad reference to the OSHA rule might suggest that 29 CFR 1910.134 in its entirety could be applied.

4. The proposal explicitly states that "if technology advances lead OSHA to amend its standard, the change would automatically apply to pesticide uses subject to the WPS as well." Regulatory obligations imposed by another agency, which does not have jurisdiction over agricultural operations, should not and cannot be automatically incorporated into regulatory requirements imposed by EPA. We question whether such a system is lawful and whether employers would be accorded their full rights to comment on any changes.

5. Within the past year, the United States Senate engaged in a much-publicized dispute with the Office of General Counsel within the U.S. Department of Labor about OSHA's jurisdiction over agriculture. Longstanding provisions of law preclude OSHA from regulating small farming operations. This attempt by EPA to incorporate OSHA regulations by reference could arguably give the agency legal grounds upon which to pursue regulatory oversight of certain agricultural operations.

We believe the OSHA standard requirements approach by EPA should be abandoned.

XVII. Monitoring Handler Exposure to Cholinesterase-Inhibiting Pesticides

NYFB supports EPA's decision not to require cholinesterase monitoring of pesticide handlers, a requirement which, in our estimation, would be burdensome and provide little return benefits. We encourage EPA not to impose such a requirement should it proceed with a final rule.

XVIII. Exemptions and Exceptions

A. Immediate Family

EPA proposes to revise the definition of "immediate family" in the WPS. The current definition states: "Immediate family includes only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters." The pending proposal would expand the definition to read: "Immediate family is limited to 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."

NYFB supports the agency in its decision not to eliminate the immediate family exemption. Additionally, we commend the agency for its effort to adapt the definition of "immediate family" to reflect more closely the family and ownership patterns that are common in agriculture and which actually reflect rural life. However, we do encourage the agency to adopt a more inclusive definition that truly reflects ownership patterns of farms.

The U.S. Department of Labor (Federal Register, September 2, 2011, Page 54841) stated that:

> *The Department has, for many years, considered that a relative, such as a grandparent or aunt or uncle, who assumes the duties and responsibilities of the parent to a child regarding all matters relating to the child's safety, rearing, support, health, and well-being, is a 'person standing in the place of' the child's parent…. It does not matter if the assumption of the parental duties is permanent or temporary, such as a period of three*

months during the summer school vacation during which the youth resides with the relative."

DOL eventually adopted this approach with respect to the family farm exception for child labor and we support EPA adopting a similar immediate family exemption here. We urge the agency to adopt a definition that embraces the totality of family farm ownership patterns by including aunts, uncles, nieces, nephews and cousins in the "immediate family" definition.

B. *Crop Advisors and Employees [Proposed §170.301(b)]*

EPA proposes to narrow the exemption for crop advisor tasks to crop advisors only, eliminating from the exemption employees directly supervised by certified or licensed crop advisors.

It is our understanding that the National Alliance of Independent Crop Consultants strongly objects to this language and we would recommend EPA carefully review the comments from this organization that we expect to be submitted. Implementation of such a narrow exemption might well have unintended, negative effects (such as potentially impeding IPM practices).

C. *Revise the Exception to the Requirement for Workers to Be Fully Trained before entering Pesticide-Treated Areas [Proposed §170.309]*

We believe that the current 5-day grace period effectively balances the needs of employers with the safety of workers and should be retained. We do not support shortening this grace period to 2 days as proposed by EPA.

NYFB appreciates the opportunity to offer these comments on EPA's proposal to revise the agricultural Worker Protection Standards. We hope the agency will seriously take into consideration our comments and suggestions to better balance worker safety against unnecessary and unfounded mandates and costs on employers. Together, stakeholders and the agency should be able to work together to address any legitimate concerns with the current WPS without imposing ineffective burdens on farmers.

Sincerely,

Dean E. Norton
President