National Cotton Council OF AMERICA

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February 14, 2023

Pesticide Re-Evaluation Division (7508P)
Office of Pesticide Programs
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460-0001

**RE: Docket No. EPA-HQ-OPP-2022-0908**

The National Cotton Council (NCC) appreciates the opportunity to provide the following comments pertaining to the Environmental Protection Agency's (EPA's) "ESA Workplan Update: Nontarget Species Mitigation for Registration Review and Other FIFRA Actions." The NCC urges EPA to continue dialog and reform with stakeholder engagement to identify reasonable and prudent measures to comply with ESA and FIFRA. While implementing preliminary measure may be necessary, NCC urges EPA to continue to be open to alternative approaches that may be more efficient and workable at the farm level while maintaining protection of endangered and threatened species.

The National Cotton Council (NCC) is the central organization of the United States cotton industry. Its members include producers, ginners, cottonseed processors and merchandizers, merchants, cooperatives, warehousers, and textile manufacturers. A majority of the industry is concentrated in 17 cotton-producing states stretching from California to Virginia. U.S. cotton producers cultivate between 10 and 14 million acres of cotton with production averaging 12 to 20 million 480-lb bales annually. The downstream manufacturers of cotton apparel and home furnishings are located in virtually every state. Farms and businesses directly involved in the production, distribution and processing of cotton employ more than 115,000 workers and produce direct business revenue of more than $22 billion. Annual cotton production is valued at more than $5.5 billion at the farm gate, the point at which the producer markets the crop. Accounting for the ripple effect of cotton through the broader economy, direct and indirect employment surpasses 265,000 workers with economic activity of almost $75 billion. In addition to the cotton fiber, cottonseed products are used for livestock feed and cottonseed oil is used as an ingredient in food products as well as being a premium cooking oil.

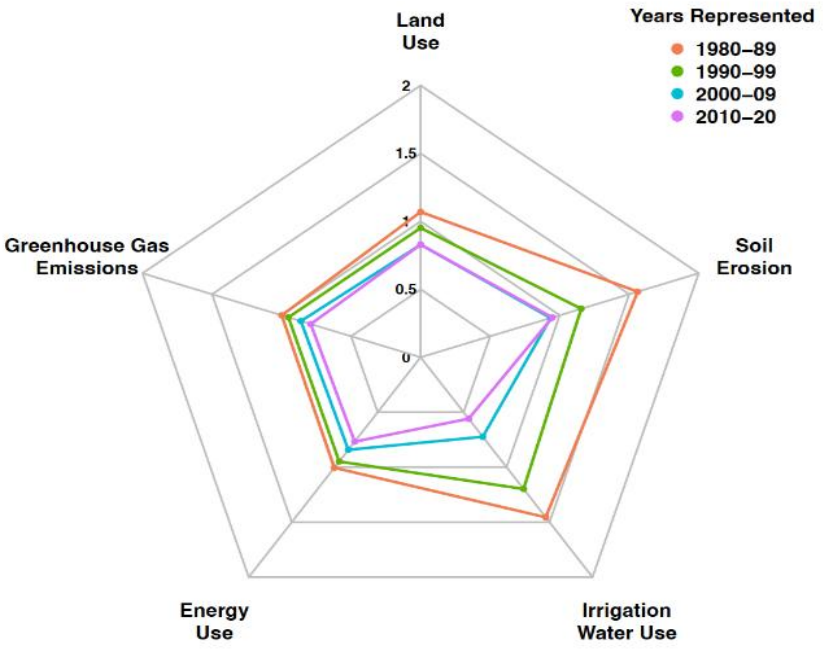
## I. General Direction

The NCC compliments EPA's general concept and directional approach to comply both with FIFRA and ESA. The NCC is aware of the numerous difficulties associated with efforts to meet the requirements of both laws simultaneously, as well as the consequences of failure to meet legal obligations. The NCC continues to support EPA's efforts to comply with these statutes in manners consistent with the science. NCC will continue to provide any reasonable assistance to aid EPA's development of efficient scientific methodology that provides protection of human

health and avoids unreasonable adverse impacts on the environment without jeopardizing listed species. The NCC does not view the proposed updates as the "Final Methodology and Mitigation", but as a necessary process until more efficient processes evolve.

The NCC appreciates EPA's recognition that many farm fields have implemented conservation practices to promote clean water and minimize soil erosion. Cotton producers are very conscious of soil losses and the long-term consequences to their operation. Additionally, cotton producers understand the value of available water and the negative impact associated with excessive water. Producers have implemented several water managements practices that are field and location specific in order to increase efficiency of irrigation practices and improve soil and soil moisture retention. With these soil and water management practices, cotton producers have demonstrated a continual reduction in their environmental footprint. The NCC is a member of a collaboration of many commodities, NGO's, food and beverage retailers, and other public and private associations/organizations/businesses - Field to Market - who created a framework to document, with scientific data and methods, the environmental impact of crop production systems. Below is a Field to Market spidergram depicting the continuous environmental improvements of cotton producers.

Cotton is predominantly grown throughout the southern U.S., with the most acreage historically in Texas. The summary chart for cotton indicates steady improvement over time in energy use, GHG emissions and irrigation water use, with recent trends since 2010 stalling in soil erosion and land use (Figure 1.4.1). Table 1.4.1 presents a summary of all indicators for cotton for reference years.




Indicators averages for cotton for the period 1998-2002

(Field to Market: The Alliance for Sustainable Agriculture, 2021. Environmental Outcomes from On-Farm Agricultural Production in the United States (Fourth Edition). ISBN: 978-0-578-33372-4).

These data show that the cotton industry continues to identify and implement measures to reduce soil loss, increase land efficiency (produce more on less), efficiently manage moisture to minimize irrigation water use, and reduce energy and greenhouse gas use/emissions.

Cotton Producers continue to be innovative pioneers driven with the desire to continually improve their farms for future generations. Cotton producers understand it is the condition of the soil and land that determines the future of their operation. They and their lineage depend on the production ability of the land, but the land and soil depend on them to provide stewardship, soil enhancement, and preservation for the future. The concept being promoted by EPA in the update recognizes many enhancements that producers have been implementing for decades. NCC is grateful of this recognition, but notes most items identified by EPA relate to row crop production. The NCC is concerned EPA is not considering orchard management and vegetable production. The NCC urges EPA to consider additional practices more appropriate for those lands as well.

The NCC urges EPA to recognize existing challenges with rented land vs. owned land – and related implications on small farmers. Many producers may rent additional farmland. However, contracts for the rented land are often short-term. At times, these rented properties may not have the proposed mitigations. Implementing conservation practices is costly and are often not priorities for the landlords. For that and other reasons, the NCC urges EPA to continue to engage stakeholders to identify the variety of measures on farms that minimize water run-off and sediment run-off. A one-time comment period is not sufficient, but a beginning of a partnership to identify and address the need.

## II. Specific Questions From EPA

### Referencing Bulletins

*"ENDANGERED AND THREATENED SPECIES PROTECTION REQUIREMENTS:*
*It is a Federal offense to use any pesticide in a manner that results in an unauthorized take (e.g., kill or otherwise harm) of endangered species and certain threatened species, under the Endangered Species Act section 9. When using this product, you must follow the measures, including any timing restrictions, contained in the Endangered Species Protection Bulletin for the area where you are applying the product. Before using this product, you must obtain a Bulletin at any time within six months of the day of application. To obtain Bulletins, consult http://www.epa.gov/espp. For general questions or technical help, call 1-844-447-3813, or email ESPP@epa.gov."*

1. **Is the label language above on how to obtain Bulletins through BLT clear? Is it easy to understand what actions are required of users, and when?**

The NCC has provided the language to a group of producers and their feedback indicates the language is clear regarding the requirement to visit BLT website. The NCC has been engaging with producers and independent agricultural consultant to spread awareness of BLT. NCC staff tested the ease of using the BLT website on multiple occasions. The first occasion was fairly easy using the active ingredient to be applied. However, on the second occasion, BLT had changed to request the EPA number for the active ingredient. This is less user friendly and not favored by producers. Producers know trade names of products and have become more familiar with active ingredients and somewhat familiar with modes of action. They do not memorize the EPA number for each product used. They are not likely to have the pesticide container with the affixed label in their office space as they make operation plans. At times, producers are in fields when they identify a pest problem requiring

costly pesticide intervention. Consideration must be made to support easy access to applicable bulleting on-the-fly. NCC urges EPA not to use the EPA number approach. If EPA feels compelled to use the EPA number approach, NCC suggests development of a quick reference system to associate the trade name and the EPA number.

Although the language is clear with respect to the requirement to consult the bulletins, the question of who the responsible party is for documentation is not clear. If the applicator is contracted to make the application, is the bulletin consultation and record keeping a responsibility of the applicator? There are aspects of such a proposal that create many challenges at the field level. The implementation of this new process needs additional thought and communication to minimize confusion and identify efficiencies. The NCC is working with a group of producers who would be impacted by these proposed actions to document the implementation at their location. Unfortunately, this effort will not be completed in time for the February 14 deadline, but will be provided to EPA upon completion. The NCC is concerned with the implementation efficiency of complying with BLT's.

A key concern for NCC is the ability to efficiently access and produce bulletins. EPA should ensure that BLT is user friendly and accessible through multiple internet browsers. NCC has witnessed multiple failed efforts using tablets to access BLT. Many producers and consultants use tablets in the office and the field to plan and implement farm operations. EPA should also recognize most farms and producers are in rural areas with limited internet speed, therefore EPA should ensure that accessing BLT is easy, with easy input requirements designed for users, and that the program is able to provide the necessary information fast through rural internet operations.

The NCC urges EPA to collaborate with the user community to ensure appropriate awareness and educational material is disseminated to the user community. The NCC is diligently striving to increase awareness of bulletins and the process to obtain an appropriate bulletin.

**2. Does 6 months give stakeholders enough time to plan for planting and other needs?**

The NCC is concerned that the 6-month range prior to a pesticide application is not adequate and urges EPA to make the period 9-months. The association of pesticide products and crop plants with traits requires producers to develop plans and order products as the previous crop is harvested. Producers desire elite varieties which are often limited in supply, therefore early booking of planting seed is required to verify allocation of varieties across the country. Contractual agreements for seed purchase must be associated with ability to utilize crop protection products. Production agriculture has implemented many logistical changes over time. One of these changes seeks to minimize on-site inventory at retail operations. Producers must plan their needs and timing of the need to ensure products are available (or delivered) as needed. Additionally, companies need time to develop the logistics necessary to provide seed across the cotton belt in a timely manner with minimum excess inventory at retail outlets. For these reasons, the NCC urges EPA to allow producers to obtain bulletins within 9 months of the application date.

3. **If your comments suggest the answer is no for either of these questions, please include suggestions for alternative language and any appropriate data to support your suggestions. EPA also welcomes affirmative comments on the proposed revisions.**

Please see discussion above.

**Reducing Surface Water Runoff Language Mitigation Pick List**

- Do not apply during rain.
- Do not apply when a storm event likely to produce runoff from the treated area is
- forecasted (by NOAA/National Weather Service, or other similar forecasting service) to occur within 48 hours following application."
- Vegetative filter strip (30 ft minimum width)
- Field border
- Field terracing/ contour buffer strips
- Contour farming
- Cover cropping
- No/reduce tillage
- Grassed waterways
- Riparian buffer zone/ riparian herbaceous zone
- Vegetative/grassed ditch banks
- Runoff retention pond/ water and sediment control basin/ sediment catchment basin/ constructed wetland
- Strip cropping
- Vegetative barriers
- Mulching with natural materials
- Alley cropping

1. **Regarding the surface water protection statements, are there additional criteria for proposing mitigation that EPA should consider?**

The NCC has reviewed the NRCS Conservation Stewardship items and recognizes that EPA has identified the most appropriate ones at this time. The NCC will continue to work with growers, consultants, and scientists to explore additional criteria. NCC will share any developments with EPA.

2. **Are the descriptions of the pick list mitigation measures in Section 4 clear? If not, please suggest alternative language.**

The NCC recognizes most of the mitigation's names are components of NRCS Stewardship programs. Many producers have worked with NRCS to implement these conservation projects on their farm as described and required to comply with NRCS technical specifications. NRCS has developed many practices over the years to assist growers with technical support to identify and construct measures to prevent soil erosion. EPA should maintain the descriptions of NRCS. Producers have worked with NRCS definitions for a long time, and altering the definitions or specifications would cause unnecessary confusion.

3. **Are there other measures that are effective in controlling dissolved runoff that should be included in the pick list? Please include supporting data with any suggestions.**

None identified at this time.

4. **Are the descriptions of the pick list mitigation measures in Section 4 clear?**

See number 2 above. It seems to be the same question.

5. **Are there other measures that are effective in controlling erosion that should be considered?**

Not at this time.

6. **Although artificial mulches are commonly used in agriculture, EPA is limiting mulches to natural materials. Should EPA also consider artificial mulches as a pick list measure? If so, to what extent do artificial mulches reduce erosion? Please provide references for supporting data.**

We were unable to accumulate any data on mulches in the allotted time.

**Reducing Ecological Risks from Spray Drift**

- EPA intends to continue commonly used spray mitigation language such as windspeed restrictions, minimum droplet size restrictions, and release height restrictions.
- EPA intends to propose spray drift buffers more regularly, as the benefits warrant, to further reduce ecological risks associated with spray drift. (includes buffers to aquatic habitats, as well as spray drift buffers to wildlife conservation.)

EPA proposes some exemptions:

- When a 10-foot windbreak is used.
- For pesticide applications made for conservation purposes in or around aquatic habitats.
- For pesticide applications made by conservation area personnel in the conservation area.
- Landowners of applicators who have completed an ESA section 7 consultation with the FWS and/or NMFS and using the pesticide product consistent with that consultation.

1. **EPA is exploring using wind-directional buffers more broadly as they are less impactful to users by reducing the instances where spray drift buffers are needed to minimize ecological risk. A wind-directional buffer means that a user need only apply a drift buffer in the direction the wind is blowing, rather than all sides of a fields. Should EPA shift to requiring wind-directional buffers to reduce spray drift associated with aerial, ground boom, and/or airblast applications? Why or why not? Please be specific and support your position with data where available. Further, are there circumstances where it is more desirable to have wind-directional buffers than others? Historically, to address ecological risk (and human health risk) under FIFRA, EPA has required spray drift buffers that apply to all sides of a field that**

**are adjacent to a water body and/or conservation area, regardless of the wind direction. More recently, however, wind-directional buffers have been proposed as mitigation measures to address listed species exposure (e.g., methomyl PID) and have been included in FWS and NMFS biological opinions for malathion.**

Wind directional buffers would be more practical than requiring buffers on all sides. Most field sides are adjacent to another crop field, and not an endangered species habitat. The buffer restrictions should be focused on the distance from the species or its habitat which typically would be one side of a field.

In many areas, wind direction remains fairly constant during the critical application window. The NCC believes collaboration with growers to assess the implementation on production farms will help clarify challenges associated with buffers and the potential impact to producers. With all pesticide products eventually being subjected to the same mitigations, there would likely be no product that could be applied in buffers, i.e. reduction in agricultural production.

The NCC urges EPA to consider alternative application methods – such as a hooded sprayers, lay-by applications or nozzles dropped into the crop canopy. As technology is identified that reduces drift, EPA should consider exemptions that encourage producers to adopt such technology.

The spray drift buffers in the table below applies to all sides of a field that are adjacent to aquatic habitats and/or conservation areas; however, pending public comment on wind-directional drift buffers, EPA may propose wind-directional buffers. Example language for a wind-directional buffer would be the following:

- "Do not apply within [X] feet of aquatic habitats (such as, but not limited to, lakes, reservoirs, rivers, permanent streams, wetlands or natural ponds, estuaries, and commercial fish farm ponds) when the wind is blowing toward the aquatic habitat."

- "Do not apply within [X] feet of any conservation areas (e.g., public lands and parks, Wilderness Areas, National Wildlife Refuges, reserves, conservation easements) when the wind is blowing toward the conservation area."

Exemptions for the 10-ft windbreak, applications for conservation purposes, and applications covered by a completed ESA consultation would still apply to wind- directional buffers.

| Description | Proposed Label Language for Pesticide Products | Placement on Label | Considerations for Proposing Mitigation |
|---|---|---|---|
| | **End Use Products** | | |
| **Application Method Prohibition** | • | Restrictions Section Under | Pesticides applied to |

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| (*e.g.*, aerial)<br>*Note:* EPA has regularly proposed and subsequently required this language on labels when it has determined that the risks of aerial applications outweigh the benefits. | "Do not apply through aerial application"<br>or<br>•<br>"Do not apply spray via aerial application" | Directions for Use | agricultural crops resulting in high ecological risks from aerial spray drift where there are low benefits to the use of the pesticide via aerial application. |

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| Description | Proposed Label Language for Pesticide Products | Placement on Label | Considerations for Proposing Mitigation |
|---|---|---|---|
| | **End Use Products** | | |
| | [For 15 mph windspeed restriction]<br>• If the windspeed is 10 miles per hour or less, applicators must use ½ swath displacement upwind at the downwind edge of the field. When the windspeed is between 11-15 miles per hour, applicators must use ¾ swath displacement upwind at the downwind edge of the field.<br><br>[For 10 mph windspeed restriction]<br>• Do not apply when windspeeds exceed 10 miles per hour at the application site.<br>• The boom length must not exceed **[EPA to choose 65% or 75% based on risks and benefits]** of the wingspan for airplanes or **[EPA to choose 75% or 90% based risks and benefits]** of the rotor blade diameter for helicopters.<br><br>OR<br>• Do not apply when wind speeds exceed 15 mph at the application site. If the windspeed is greater than 10 mph, the boom length must be 65% or less of the wingspan for fixed wing aircraft and 75% or less of the rotor diameter for helicopters. Otherwise, the boom length must be 75% or less of the wingspan for fixed-wing aircraft and 90% or less of the rotor diameter for helicopters." | | |
| **Spray Drift Management Application Restrictions**<br>To be considered for products that are applied as liquid with airblast equipment | **"MANDATORY SPRAY DRIFT MANAGEMENT**<br>**Airblast Applications:**<br><br>• Sprays must be directed into the canopy.<br>• Do not apply when wind speeds exceed **[10 or 15]** miles per hour at the application site. | Directions for Use, in a box titled "Mandatory Spray Drift Management" under the heading "Airblast Applications" | Pesticides applied to agricultural crops via liquid spray using airblast equipment with ecological risk due to spray drift. |

| | Proposed Label Language for | Placement on | Considerations for |
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| Description | Pesticide Products | Label | Proposing Mitigation |
|---|---|---|---|
| | **End Use Products** | | |
| *Note:* EPA has regularly required this language on labels consistently over the past several years. | •User must turn off outward pointing nozzles at row ends and when spraying outer row.<br>•Do not apply during temperature inversions." | | |
| **Spray Drift Management Application Restrictions**<br>To be considered for products that are applied as liquid with ground boom equipment<br>*Note:* OPP EPA has regularly required this language on labels consistently over the past several years. | **"MANDATORY SPRAY DRIFT MANAGEMENT**<br>**Ground Boom Applications:**<br>• Do not release spray at a height greater than **[typically 2-3 ft]** feet above the ground or crop canopy.<br>• Applicators must select nozzle and pressure that deliver medium with American Society of Agricultural & Biological Engineers Standard 572 (ASABE S572).<br>• Do not apply when wind speeds exceed **[10 or 15]** mph at the application site.<br>• Do not apply during temperature inversions." | Directions for Use, in a box titled "Mandatory Spray Drift Management" under the heading "Ground Boom Applications" | Pesticides applied to agricultural crops via liquid spray using ground boom equipment with ecological risk due to spray drift. |
| **Spray Drift Buffer to Aquatic Habitats**<br>To be considered for products that are applied as liquid with aerial (except Ultra Low Volume/ULV applications for mosquitocides), groundboom, or airblast equipment | Aerial (non-ULV):<br>• "Do not apply within **[typically 50-150]** feet of aquatic habitats (such as, but not limited to, lakes, reservoirs, rivers, permanent streams, wetlands or natural ponds, estuaries, and commercial fish farm ponds).<br>Ground:<br>• " Do not apply within **[typically 15-50]** feet of aquatic habitats (such as, but not limited to, lakes, reservoirs, rivers, permanent streams, wetlands or natural ponds, estuaries, and commercial fish farm ponds). When using a hooded spray boom, do not apply within [10-30] feet of these protected areas." | Directions for use – Under the Restriction or Use Restriction Section | Pesticides applied to agricultural crops via liquid spray with aquatic risk due to spray drift. |

| Description | Proposed Label Language for Pesticide Products | Placement L | Considerations for Proposing Mitigation |
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| | **End Use Products** | | |

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| | Airblast:<br>• " Do not apply within **[typically 15-25]** feet of aquatic habitats (such as, but not limited to, lakes, reservoirs, rivers, permanent streams, wetlands or natural ponds, estuaries, and commercial fish farm ponds)."<br><br>All Application Methods Above:<br>• "Applications are exempted from this spray drift buffer requirement when:<br>1) A 10-ft high windbreak is established between the field and the aquatic habitat. For this exemption to apply, the windbreak must have single to multiple rows of trees and shrubs planted linearly between the field and the aquatic habitat in a manner that fully partitions the two areas;<br>2) The application is conducted for conservation purposes (e.g., to control invasive species) by federal, state, or local personnel or persons under their direct supervision; or<br>3) The landowner or applicator has completed an ESA section 7 consultation with U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service on the use of the product." | | |

| Description | Proposed Label Language for Pesticide Products | Placement on Label | Considerations for Proposing Mitigation |
|---|---|---|---|
| | **End Use Products** | | |
| **Spray Drift Buffer to Wildlife Conservation Areas**<br>For products that are applied as liquid with aerial (except Ultra Low Volume/ULV | Aerial (non-ULV):<br>• "Do not apply within **[typically 50-150]** feet of any conservation areas (e.g., public lands and parks, Wilderness Areas, National Wildlife Refuges, reserves, conservation easements)." | Directions for use – Under the Restriction or Use Restriction Section | Pesticides applied to agricultural crops via liquid spray with terrestrial risk due to spray drift. |
| | Ground:<br>• " Do not apply within **[typically 15-50]** feet of any conservation areas (e.g., public lands and parks, Wilderness Areas, National Wildlife Refuges, reserves, conservation easements) unless using a hooded spray boom.<br>When using a hooded spray boom, do not apply within **[typically 10-30]** feet of these protected areas."<br><br>Airblast:<br>• "Do not apply within **[typically 25-50]** feet of any conservation areas (e.g., public lands and parks, Wilderness Areas, National Wildlife Refuges, reserves, conservation easements)."<br><br>All Application Methods Above:<br>• "Applications are exempted from this spray drift buffer requirement when: | | |

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| | 1) A 10-ft high windbreak is established between the field conservation area. For this exemption to apply, the windbreak must have single to multiple rows of trees and shrubs planted linearly between the field and the aquatic habitat in a manner that fully partitions the two areas;<br>2) The application is conducted by conservation area personnel or persons under their direct supervision; or<br>3) The landowner or applicator has completed a consultation with U.S. Fish and Wildlife Service and/or the National | | | |

2. **Should EPA consider reduced distances for spray drift buffers when other drift reduction technology is used (e.g., drift reducing agents/adjuvants)? If so, to what extent do other drift reduction technologies reduce spray drift such that buffer distances can be reduced? Please provide references for supporting data.**

Yes. Reducing the distance of buffers for users of drift reduction technology would encourage greater attention to drift management. Additionally, it would create an incentive for companies to develop new drift reduction technologies given a greater market need. The NCC believes working with growers by granting incentives to drift reduction methodology/technology shows a partnership to encourage continual improvements.

3. **With regard to spray drift buffers for conservation areas, is the list of examples of conservation areas representative of areas to be protected? Do you have suggestions for alternative or additional descriptions?**

Yes to answer the first question. We have no suggestions at this time for the second question.

## III. Key Concerns

The NCC strongly urges EPA and OPMP to engage with ARS for the development of methodology and technology to reduce spray drift and run-off (water and sediment). It is imperative that our federal agency responsible for agricultural research be a partner in enhancing agricultures management of drift and run-off.

The NCC urges EPA, in collaboration with ARS, to evaluate drift models to ensure validity with respect to current application technology, particularly aerial applications. Aerial applications are a critical aspect of Best Management Practices in numerous locations and

environmental conditions. NCC has often urged recognition of the critical importance of maintaining aerial applications to meet the application timing windows as well as application needs when field conditions do not permit ground application. The NCC believes elimination of aerial applications – for numerous locations – will result in control loss and require additional costly applications of pesticides to regain pest control. The NCC urges closer consultation with the Ag Aviation Industry, ARS, and EPA to ensure appropriate representation of current drift reduction capabilities.

***EPA requests comment on these options and any other ideas for reducing exposures to terrestrial vertebrates and invertebrates.***

- ***Reducing pesticide dust-off: EPA is considering measures to reduce the potential for exposures to insect pollinators from treated seed dust-off. Reducing dust-off from treated seeds reduces the amount of the pesticide that abrades off the seed and that can contact insect pollinators.***
    - ***For example, the Agency is considering whether to include instructions relating to requiring use of dust-reducing techniques and ways of measuring the efficacy of those techniques. One dust-reducing technique under consideration is applying a seed coating during treatment of the seed. If EPA proposes the use of this technique, a corresponding threshold for dust reduction and a means to measure the efficacy of the seed coating in dust-off reduction would be needed. An example of a measurement tool is the Heubach test, which measures the abrasion potential. Another dust-reducing technique under consideration is the use of fluency agents. Fluency agents increase flowability of treated seeds out of the hopper for more efficient planting, creates easier clean up, and reduces dust-off. EPA seeks comments on techniques and measurements that might be referenced in instructions to reduce dust-off. Labeling instructions do not currently address dust-off and thus instructions of this kind would be new.***

The NCC is concerned that EPA is assuming an issue (dust-off) without data relevant to current practices. Restrictions and requirements are appreciated when relevant data and not speculation support a concern. The NCC is concerned EPA is suggesting requirements based on evolving technology that the industry is working to continually improve. The NCC urges EPA to encourage such improvements without inducing unsupported requirements. The agricultural industry continually strives to improve all operational aspects, including stewardship of the environment beyond regulated requirements. Turning those stewardship practices into regulations diminishes the desire to do more than what is required.

NCC is aware of multiple industry actions that have focused on minimizing dust-off. The NCC refers EPA to a collaborative stewardship training developed by the American Seed Trade Association and CropLife America (Contact Us | American Trade Seed Association (ASTA) (betterseed.org)). NCC is not aware of data demonstrating recent lethal (to pollinators or other organisms) dust-off concerns and urges EPA to work with industry to address any dust-off concerns through improved technology rather than regulatory restrictions that are not supported by scientific data.

**Pesticide-Treated Seed: Proposed Label Language and Considerations for Future Ecological Mitigation**

- ***<u>Burying spilled pesticide-treated seed</u>: EPA is considering additional measures to reduce exposures to terrestrial vertebrates from ingestion of treated seed. Such measures could involve ensuring limited access to pesticide-treated seed that has been spilled during loading and planting by requiring a minimum depth for burying treated seeds spilled during loading and planting (such as in row ends). Current labels generally refer to covering or collecting spilled seeds***

    - ***A 2-foot depth for burying treated seeds appears to be a practical measure for growers to avoid disturbance during plowing that may also address risk to birds and mammals from eating treated seed. In some cases, a 2-foot burial depth has already been required (e.g., at 7 CFR § 301.89-12). EPA is interested in information on common practices for burial of spilled treated seed and the estimated impacts or concerns if including a set depth (e.g., 2-foot depth).***

- ***<u>Disposing of excess seed after planting</u>: Other measures being considered to reduce exposures to terrestrial vertebrates from ingestion of treated seed, and to reduce potential groundwater or surface water concerns, include additional instructions relating to disposal of excess treated seed that would not be stored and used for future plantings.***

  ***Such measures could include labeling instructions for the grower to contact the registrant for information on appropriate disposal and amended registration terms and conditions to require registrants to create disposal plans and educational materials for growers. A registrant disposal plan could include disposal options and bar or condition certain methods of disposal such as combustion or composting. Current instructions, as described in the table below, refer generally to burying excess seed away from water bodies.***

| Description | Proposed Label Language for Pesticide Products | Placement on Label |
|---|---|---|
| | **End Use Products** | |
| **Seed Treatment Dye Statement** | **"REQUIRED DYE STATEMENT**<br>Seed treated with this product must be visually identifiable from untreated seed by the use of an approved colorant or dye to prevent accidental use of treated seed as food for humans or feed for animals. Refer to 21 CFR, Part 2.25. Any colorant or dye added to treated seed must be cleared for use in accordance with 40 CFR, Part 153.155(c)." | Directions for Use |
| **Seed Treatment**<br>For products allowed for on-farm seed treatment (not for distribution or sale of the seed) | "**Use of On-Farm Treated Seed (when treated seeds are not for sale or distribution)**<br>• Store treated seed away from food and feedstuffs.<br>• Do not allow children, pets, or livestock to have access to treated seeds.<br>• Plant treated seed into the soil at no less than [INSERT RECOMMENDED OR REQUIRED MINIMUM DEPTH]. Ensure that all planted seeds are thoroughly incorporated by the planter during planting. Additional incorporation may be required to thoroughly cover exposed seeds.<br>• Treated seeds exposed on the soil surface may be hazardous to wildlife. Cover or collect treated seeds spilled during loading and planting (such as in row ends).<br>• Dispose of all excess treated seed by burying seed away from bodies of water | Directions for Use |
| | [**Note to registrant**: All other requirements regarding the use of the treated seed, which include, but are not limited to, instructions relating to endangered species protection, environmental hazard statements, maximum use rates, soil incorporation depth, plant back intervals, personal protective equipment, and storage and disposal statements, | |
| | | |
| **Seed Treatment Seed Bag/Container Labeling**<br>For products allowed for commercial seed treatment and on-farm seed treatment (to appear on seed bag tags when treated seeds are to be sold or distributed) | **"Commercial Seed Treatment and On-Farm Seed (when treated seeds are to be sold or distributed) – Seed Bag**<br>**"The Federal Seed Act requires that bags containing treated seeds shall be labeled with the following statements:**<br>• **This seed has been treated with (insert name of active ingredient of pesticide).**<br>• **Do not use for food, feed, or oil purposes."** | Direction for Use |

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| | **"The U.S. Environmental Protection Agency requires that bags containing treated seeds shall be labeled with the following statements. Any seed treated with [PRODUCT NAME] that is sold or distributed without these statements is an**<br><br>This seed has been treated with [INSERT PRODUCT NAME(s) (EPA REG. NO(s))] containing [INSERT NAME(S) OF ACTIVE INGREDIENT(S)].<br>• The contents of this bag are for planting purposes only. Do not use for food, feed, or oil purposes.<br>• Store treated seed away from food and feedstuffs.<br>• Do not allow children, pets, or livestock to have access to treated seeds.<br>• Plant treated seed into the soil at no less than [INSERT RECOMMENDED OR REQUIRED MINIMUM DEPTH]. Ensure that all planted seeds are thoroughly incorporated by the planter during planting. Additional incorporation may be required to thoroughly cover exposed seeds.<br>• Treated seeds exposed on the soil surface may be hazardous to wildlife. Cover or collect treated seeds spilled during loading and planting (such as in row ends).<br>• Dispose of all excess treated seed by burying seed away from bodies of water.<br>• Do not contaminate bodies of water when disposing of equipment wash water.<br><br>[**Note to registrant**: All other requirements regarding the use of the treated seed, which include, but are not limited to, instructions relating to endangered species protection, environmental hazard statements, maximum use rates, soil incorporation depth, plant back intervals, personal protective equipment, and storage and disposal statements, | |

The NCC is not aware of data or reasoning that the current requirement of "burial away from water" is not sufficient. Requiring registrant to develop a disposal plan will add a tremendous burden to producers during a critical time management period – planting crops. Many producers plant multiple crops, usually in succession. For example, the planting window for corn begins earlier than cotton, and cotton begins before soybeans. Producers can plant corn acres, immediately followed by cotton acres, immediately followed by soybean acres. Restrictions mandating collection of unused treated seeds and coordination with registrants to have seed collected, shipped, and disposed of introduces numerous opportunities for human error that could be more detrimental than simply burring the excess treated seeds away from water, not to mention the interrupted time lost after each crop is planted. It should be noted that treated seeds are very expensive inputs. Producers do not have large volumes of excess seed in open bags or containers. NCC would argue the volume of excess seed is not sufficient to implement a requirement for alternative disposal. NCC supports maintaining the current process which minimized the burden on producers heavily engaged in planting multiple crops in a limited

window of opportunity. Buried seeds removes access and removes risks to species. The NCC urges EPA to retain the current burial requirement.

NCC reminds EPA that the introduction of treated seed revolutionized the agricultural industry's approach to numerous difficult pest organisms, particularly soil borne diseases and soil inhabiting insect pests. The use of treated seed eliminated numerous potential avenues of exposure risks for handlers and workers and provided a unique method for dose control. The ease of implementing the new methodology encourages successful adoption and is consistent with IPM for cotton. NCC urges EPA to refrain from eliminating the ease of adoption for seed treatments. Going backwards should not be induced by policy.

NCC urges EPA to retain the treated article exemption for treated seed. EPA should clarify if any proposed language would change the treated article exemption. NCC strongly opposes removal of the treated article exemption for seed.

**Promoting Pollinator Stewardship: Proposed Advisory Language**

EPA is proposing to include revised advisory language for insect pollinators in its FIFRA actions. EPA may consider mandatory mitigation to address on-field insect pollinator risk as part of proposed FIFRA actions and/or through its ESA mitigation strategies. EPA intends to propose this statement when the ecological risk assessment identifies acute or chronic risk to insect pollinators from agricultural crop uses of the pesticide. EPA seeks feedback on the example label language in the table below.

This section intentionally left blank.

| Description | Proposed Label Language for Pesticide Products | Placement on Label | Considerations for Proposing Language |
|---|---|---|---|
| | **End Use Products** | | |
| **Pollinator Hazard Statement**<br>For all products applied to agricultural crops. | **[EPA to choose either statement depending on whether the pesticide displays residual toxicity:**<br><br>**Extended residual toxicity not displayed:]**<br><br>"This product is **[highly/moderately]** toxic to bees and other pollinating insects exposed to direct treatment on blooming crops or weeds."<br><br>**[Extended residual toxicity displayed:]** | Environmental Hazards under the Heading "Pollinator Hazard Statement" | Pesticides applied to agricultural crops when there is acute risk to insect pollinators. Pesticides applied to agricultural crops via liquid spray when there is acute or chronic risk to insect pollinators. |
| | **"This product is [highly/moderately] toxic to bees and other pollinating insects exposed to direct treatment or to residues in/on blooming crops or weeds."** | | |

| | | | |
|---|---|---|---|
| **est Managem ent Practices for Pollinator Protection For all products delivered via liquid spray applicatio ns to agricultur al crops.** | **"Best Management Practices for Pollinator Protection Following best management practices (BMPs) can help reduce risk to pollinators. To protect wild and managed pollinators, the following BMPs should be implemented:**<br>**• Develop and maintain clear communication with local beekeepers to help protect honey bees. To the extent possible, advise beekeepers within a 1-mile radius 48-hrs in advance of the application, and confirm hive locations before spraying.**<br>**• Avoid applications when bees are actively foraging.**<br>**• Apply pesticides in the evening and at night when fewer pollinators are foraging.**<br>**• Use Pollinator Protection Plans when they are available. These plans are developed by stakeholders within their respective states/tribes to promote communication between growers, landowners, farmers, beekeepers, pesticide users, and other pest management professionals to reduce exposure of bees and other pollinators to pesticides.**<br>**• Report suspected pollinator pesticide poisonings via EPA's Pesticide Incident Reporting website: https://www.epa.gov/pesticide-incidents. For additional resources on pollinator BMPs and Pollinator Protection Plans, visit https://www.epa.gov/pollinator-protection/tools- and-strategies-pollinator-protection."** | Directions for Use – Under the Best Management Practices header after Resistance Management section | |

The NCC continues to promote the protection of bees and similar pollinators but urges EPA to exercise caution using the term "Pollinator" in a regulatory context. Biologically, anything that moves the pollen from the male to the female organ of the plant is a pollinator. Pest activity, such as Tarnished Plant Bug or Corn Earworm, in a flower may result in pollen movement and thus be defined as a pollinator in a legal context. The NCC urges EPA to avoid the use of generalized language in regulatory content.

Additionally, the NCC urges EPA to recognize the limitations of the current assessments. The lack of an exposure component in EPA risk assessments for pollinators assumes 100 percent exposure. Bees and other pollinators forage a large area and utilize multiple sources of food. The inclusion of other food sources would have a dilution effect that is not currently captured in EPA's pollinator risk assessment.

The NCC continues to support BMP's for bees and non-pest pollinators and urge greater research to develop appropriate pollinator risk assessments. The NCC does not seek language to disrupt the collaboration of producers and beekeepers. The NCC is aware of numerous collaborations between producers and managed beekeepers and notes the growing desire of beekeepers to be in agricultural areas where bees thrive, and honey production is strong. It is difficult to assert harm to other pollinators when honey producers continue to maintain high yields in agricultural settings.

## Ecological Incident Reporting Label Language

EPA expects to regularly propose language for pesticide labels that would provide product users with consistent guidance on how to report ecological incidents, including bee kills. EPA seeks feedback on the example label language in the table below. Additionally, EPA is requesting specific feedback on the following question:

• Are users or other people having any issues reporting bee or other ecological incidents to EPA?

| Description | Proposed Label Language for Pesticide Products | Placement on Label | Criteria for Proposing Mitigation |
|---|---|---|---|
| | **End Use Products** | | |
| **Ecological Incidents Statement** To be proposed for all products with outdoor uses | "**REPORTING ECOLOGICAL INCIDENTS**: For guidance on reporting ecological incidents, including bee kills, see EPA's Pesticide Incident Reporting website: https://www.epa.gov/pesticide-incidents" | Directions for Use, under the heading "Reporting Ecological Incidents" | All products with outdoor uses |

The NCC is not aware of any difficulty providing ecological incidents to EPA or State Lead Agencies. The addition of the "Reporting Ecological Incidents" would allow an additional venue for EPA outreach and seems appropriate to NCC.

In conclusion, the NCC appreciates the opportunity to provide these comments to EPA and looks forward to working with EPA to assure scientific processes are identified that allow efficient implementation on the farm assuring the protection of endangered or threatened species.

Respectfully,

Steve Hensley