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NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE
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POLICY STATEMENT

NONPOINT SOURCE POLLUTION PREVENTION

The National Association of State Departments of Agriculture (NASDA) recognizes the need to address agricultural nonpoint source pollution which may have adverse effects on the environment and human health. Agricultural operations, along with urban, construction, septic and natural sources, require a comprehensive and coordinated management strategy, much of which is already in place, but in many cases inadequately funded.

In order to reduce complex and diverse nonpoint source (NPS) pollution, a commitment of time and resources is necessary, similar to the 20-year commitment our country has made to eliminating point source pollution. However, management of this problem will require a different approach than that of point source pollution because, unlike point source pollution, NPS pollution is primarily a weather-related phenomenon that can be managed, but not feasibly eliminated. Never has this point been made more apparent than by the 1993 flood. NPS pollution is caused by the inadvertent discharge of pollutants from a wide variety of society's most essential activities.

CLEAN WATER ACT

The Clean Water Act (CWA) does not stand alone in protecting America's waters from NPS pollution. Other ongoing programs at the federal, state and local levels must be funded fully, and coordinated with, not superseded by, the CWA. In particular, this includes the soil conservation and water quality provisions of the 1985 and 1990 farm bills and the state groundwater and surface water protection programs of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The CWA reauthorization should not directly or indirectly create a federal water quality law or program which supersedes, abrogates or impairs state water allocation systems and water rights. Nor is it appropriate to link USDA commodity, conservation or disaster program payments to the success or failure of management programs for NPS pollution authorized under the CWA since these farm programs have specific goals and benefits which balance environmental protection with profitable agricultural production.

The reauthorized CWA's central focus for NPS management solutions should be reasonable, voluntary, and based on incentives, education and technical assistance. NPS pollution management programs should emphasize the protection of water resources and state-designated water uses, including state-designated agricultural uses, recognizing the importance and needs of individual agricultural producers and other landowners affected by the CWA. This approach emphasizes the use of locally designed and applied, economically feasible, site-specific best management practices (BMPs) which do not infringe on private property rights. (The term Best Management Practices means methods, measures or practices determined to be most practical and effective in preventing or reducing the impact of pollutants generated by nonpoint sources. BMPs can be applied before, during or after pollution producing activities to reduce or eliminate the introduction of pollutants into receiving waters.)

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NONPOINT SOURCE MANAGEMENT

The CWA contains valuable provisions for NPS management embodied in Section 319. Although Section 319 has been historically underfunded and has been hampered by bureaucratic roadblocks, all states now have approved Section 319 assessments and management programs.

The proper management of NPS pollution lies in state and local efforts. As such, states should continue to identify and resolve their priority NPS water problems through administration of Section 319 funds. With state oversight and approval, local entities should continue to carry out these NPS programs. State and local programs should provide for a mix of research, development, education and technical and financial assistance for both planning and implementing actions aimed at achieving state designated uses. Agencies at the federal and state levels should harmonize objectives and coordinate funding for national and regional NPS management programs.

SECTION 319

Amendments to the CWA should continue to focus on the 319 program as the means for states to identify nonpoint sources in critical areas, and to develop management programs to control discharge. Reauthorization of the CWA should provide for increased funding and technical support for state management programs and local implementation. Management efforts funded by Section 319 should be directed to priority areas based on scientific assessments that identify water bodies with impaired or threatened uses. Priority, as determined by states, should be based on the magnitude of risk to human health, the protection of designated uses, and likelihood of further significant and unreasonable water quality degradation if no action is taken.

Strategies should be developed on a hydrologic unit, watershed-wide basis using an approach that includes the consideration of both surface and ground water quality. Programs should focus on cost-effective, site specific practices for individual operations with flexibility for implementation. Section 319 management programs on federal lands should be developed and implemented by the specific agency statutorily charged with management of the lands in question, rather than by regulatory authorities independent of that agency.

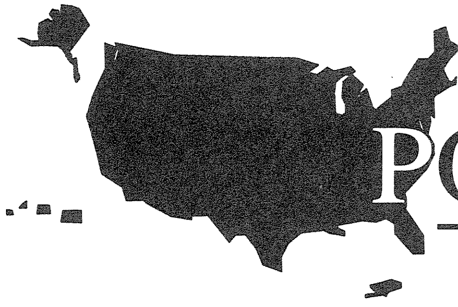
In order for Section 319 to work effectively for agriculture, the U.S. Department of Agriculture must play a lead role in the formulation and communication of technology-based best management practices in agriculture. USDA should assist in coordinating Section 319 programs with technology-based conservation measures adopted in the 1985 and 1990 farm bills and refined by the Soil Conservation Service (SCS), FIFRA pesticide regulations, wetlands protection, public lands management, and EPA groundwater policies.

NONPOINT SOURCE MONITORING

An effective and cost-efficient response to water quality problems requires accurate and reliable information on the source, extent and impact of NPS pollution, as well as the effectiveness, utility and economic feasibility of conservation measures and best management practices. CWA reauthorization should include a strong financial commitment to further research, monitoring and assessment projects. Monitoring should include before and after sampling as well as frequent sampling during storm events and assessment of natural and historic loadings (pollutants). Scientific research and monitoring projects should follow protocols developed by the U.S. Geological Survey and should be concluded on a watershed basis with local and state input. Representative pilot projects aimed at achieving market based incentives on a watershed or regional level should be encouraged. It is, however, inappropriate to provide the authority for citizen suits against individuals participating in NPS management programs. A more prudent use of scarce fiscal resources is to provide monetary assistance to states for monitoring activities rather than to fund voluntary monitoring programs.

SECTION 208

Section 208 of the CWA provided that states prepare statewide and regional plans, based on watersheds, for the prevention of both point and nonpoint source pollution. Rural NPS pollution was addressed through the establishment of the Rural Clean Water Program (RCWP) as a parallel effort complementing the funding of municipal sewage districts. NASDA believes additional rural watersheds should be brought under the RCWP through a long term funding commitment under Section 208.



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POLICY STATEMENT

WETLANDS REGULATIONS

The National Association of State Departments of Agriculture (NASDA) strongly believes that many of our nation's wetlands are highly valuable resources that must be conserved and enhanced. At the same time, any federal program to protect wetlands must also preserve private property rights and allow for a balance between economical agricultural production and wetland conservation.

The debate over federal wetlands policy has proven to be one of the most contentious and difficult issues facing Congress. Clearly, the federal government has a role in stemming the rate of wetlands loss and encouraging restoration of areas that have been degraded by pollution or careless development activity. The policy development process is complicated by the reality that 75 percent of the nation's wetlands resource in the lower 48 states is privately owned and that much of that resource is located near large population centers.

Conserving and restoring the nation's wetlands will require an enormous commitment of privately owned land, money and expertise. It cannot be accomplished without the involvement of the private sector, particularly the people who own wetlands, in conservation and restoration activities.

The need for wetlands regulatory reform cannot be dismissed. The federal regulatory wetlands program in effect today under section 404 of the Clean Water Act is not the product of a carefully considered and fully debated legislative policy. Current federal wetlands law is the result of 20 years of bureaucratic decisions and judicial rulings under very general statutory authority — authority that does not mention the word "wetlands."

NASDA, therefore, believes that in order to protect wetlands and preserve private property rights, the following modifications must be made to section 404 during the Clean Water Act reauthorization.

WETLAND DEFINITION AND DELINEATION

Wetlands should be defined as lands which have a predominance of hydric soils and which are inundated by surface water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated conditions. This definition generally includes swamps, marshes, bogs, and similar areas.

In implementing this definition, rules should be established to delineate such wetlands, which —

- result in the delineation of lands as wetlands only if clear evidence of wetlands hydrology, hydrophytic vegetation, and hydric soils are present during the period in which such delineation is made;
- result in the classification of vegetation as hydrophytic only if such vegetation is more typically adapted to wet soil conditions than to dry soil conditions or is equally adapted to wet or dry soil conditions;
- result in the classification of lands as wetlands only if some obligate wetlands vegetation is found to be present during the period of delineation;
- result in the conclusion that wetlands hydrology is present only if water is found to be present at the surface of such lands for at least 21 consecutive days during the growing season (defined as the period between the average date of the last frost in the spring and the average date of the first frost

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in the autumn) in which such delineation is made and for 21 consecutive days in the growing season in a majority of the years for which records are available; and

- does not result in the classification of lands as wetlands that are temporarily or incidentally created.

For the purpose of delineating wetlands, normal circumstance should be determined on the basis of the factual circumstances in existence at the time the delineation is made.

Classification System

In order to preserve and protect truly valuable wetlands, a classification system should be developed for lands which meet the above definition. The system could restrict activity on high value wetlands, allow for permitted activities on moderate value wetlands, and exempt low value wetlands from regulations. In cases where economic production is denied on a class of wetlands, compensation should be provided to the land owner.

The category of wetlands statutorily exempt from regulations should include: 1) land that was both manipulated and cropped before December 23, 1985 (prior converted cropland), 2) wetlands that serve limited wetlands functions, and 3) insignificantly small wetlands.

Normal Farming Practice Exemption

Current law allows normal farming practices on wetlands without a section 404 permit. That "normal farming practice" exemption should be clarified to mean normal ongoing practices as defined by the Secretary of Agriculture, in consultation with the Cooperative Extension Service for each state and the land grant university system and agricultural colleges of the state. Existing practices and such other practices as may be identified in consultation with the affected industry or community should be taken into account.

Mitigation Requirements & Delineation Activities

Farmers, ranchers and natural resource managers believe the federal government needs to speak with one voice. However, because of the inconsistency caused by separate determinations made under the Farm Bill and the Clean Water Act, producers have too often received conflicting answers from the four different agencies currently having some regulatory responsibility for wetlands.

Unfortunately, the problem seems to be worsening. Recently, the EPA made a decision to join the Corps in using the 1987 Army Corps of Engineers manual when defining a wetland, while the Soil Conservation Service and the Fish and Wildlife Service are using a different definition from the 1990 Farm Bill. A wetlands determination will now be made from two different definitions, two different regulations and four different agencies.

Mitigation requirements for agricultural wetlands under section 404 should be revised to be consistent with the swampbuster requirements in the 1990 Farm Bill.

The 1990 Farm Bill also directs the Soil Conservation Service and the Fish and Wildlife Service to identify wetlands. Any identification or classification system established under the Clean Water Act for agricultural lands should be consistent with those contained in the 1990 Farm Bill.

Wetlands Reserve Program

The 1990 Farm Bill authorized the Wetlands Reserve Program (WRP) for the restoration and protection of wetlands through the purchase of easements on prior converted cropland and farmed wetlands. In FY92, Congress appropriated $46.357 million to USDA for a pilot program and set a maximum enrollment of 50,000 acres. Landowners demonstrated substantial interest in the restoration and protection of agricultural wetlands. Owners of 2,337 farms submitted bids.

More than 60 percent of the total accepted acreage (30,868 acres) will be restored to wetlands; 14,105 acres will be restored to marshlands, wet meadows, or potholes; 3,374 acres will be restored to other types of wetlands; and 1,542 acres are riparian areas or upland buffers adjacent to restored wetlands that will provide habitat complimentary to the wetlands. An estimated 7,509 acres will directly benefit the recovery of threatened or endangered species.

Due to a permanent commodity program base acreage reduction of 10,113 acres, it is estimated that deficiency payments will be reduced by $3.4 million during the 1993 to 1998 period, and CRP rental payments will be reduced by about $700,000 since 2,056 CRP acres are entering the program.

Congress appropriated no additional funds for the WRP in FY93. NASDA believes continued and increased funding will assist in conserving and enhancing our wetlands resource.

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POLICY STATEMENT

ENDANGERED SPECIES ACT

The National Association of State Departments of Agriculture (NASDA) supports the reauthorization of the Endangered Species Act (ESA) and urges Congress to enact legislation allowing for the protection of endangered animal and plant species as well as guarding the greater public interest. Any federal program to protect threatened and endangered species must also preserve private property rights and allow for a balance between economical agricultural production and species conservation. As Congress debates the sixth reauthorization of the Endangered Species Act, it is critical that lawmakers fully comprehend the policy permutations that have occurred regarding the nation's efforts to protect threatened and endangered species.

NASDA fully appreciates the advances of science which have provided us with a greater understanding of the complexity of the world's ecosystems. New uses have been discovered for common and exotic plants and a greater appreciation has been gained for the need to protect animal and plant species and their habitats. Farmers and ranchers in America understand the need to protect all species. However, farmers and ranchers bear the costs of endangered species protection. As stewards of the vast majority of the nation's land resources, farmers and ranchers, in turn, are stewards of most of the habitat of all plant and animal species in America.

The ESA began as an ambitious attempt to stem the tide of species extinction in America. What has developed, however, is an extensive program with wide-ranging authority without appropriate guidance or accountability. This lack of proper guidance, which Congress should provide, has created an atmosphere of absolute, unfettered authority among regulators at the U.S. Fish and Wildlife Service (FWS). Landowners, particularly farmers and ranchers, find themselves at the mercy of the FWS regulators when their property is identified as "critical habitat" for a species that may, or may not, be in danger of extinction.

BACKGROUND

When Congress passed the Endangered Species Act in 1973, the law's goal was to prevent the extinction of America's natural resources by bringing harmony to the biological system. This law expired in October 1992. The 1973 Act established a uniform procedure for designating a plant or animal as being in danger of extinction, protecting that species from further decline and formulating a plan for its recovery. The law made it a federal offense to kill, injure, trap, harass or otherwise "take" any animal species listed as endangered or threatened. It is also a crime to buy, sell, possess, export or import any listed species, or any product made from such a species.

Under the 1973 law, "endangered" means on the brink of imminent extinction; "threatened" means facing extinction in the foreseeable future. The Departments of Interior and Commerce decide which species should be listed as endangered or threatened. The Fish and Wildlife Service handles land (animal and plant) species while the National Marine Fisheries Service handles most marine species.

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The 1978 amendments established the Cabinet level Endangered Species Committee (sometimes called the God Squad) with the power to exempt a construction project or other activity from the ESA's restrictions and allow that activity to proceed even if it would cause the extinction of a species. In 1988, Congress amended the Act to clarify that while decisions about whether to list a species must be based strictly on science, economic factors may be considered in defining "critical habitat" necessary to ensure a listed species' survival.

CURRENT STATUS

As of April 2, 1993, the ESA protects 1,306 species — 775 found in the U.S. and other countries, and 531 found exclusively in the U.S. These include 336 mammals, 242 birds, 112 reptiles, 375 plants, 103 fish, 57 clams, 19 amphibians, 28 insects, 20 snails, 11 crustaceans and three arachnids.

NASDA POLICY

NASDA supports amendments to the ESA that reaffirm the goal of conserving endangered and threatened species while assuring that the decisions taken to attain this goal truly balance species conservation requirements with the economic and social needs of the human community. NASDA firmly believes that reauthorization of the ESA must acknowledge the following:

- The definition of the term "species" must clarify the intent of Congress concerning "subspecies" and "population segment" as well as the levels of protection to be afforded to candidate species. Proof of a species being endangered shall be the responsibility of the petitioner or the Department of the Interior and not the general public.

- The socio-economic impacts of species listing, with reasonable scientific criteria to prevent indiscriminate species listing, must be considered.

- An open process for delisting must be utilized which will specifically provide an opportunity for the public to petition FWS for delisting within one year of listing of an endangered or threatened species. If FWS does not delist, the Act should give the petitioner the right to a formal hearing before an Administrative Law Judge on all matters pertinent to the issue.

- Extensive public input into the listing process, recovery plan process and delisting process must be allowed.

- Consideration should be given to the probable impact to private property rights and society's obligations to pay for the recovery of a species and to compensate individuals whose private property is taken or devalued.

- The role of voluntary agreements with landowners for captive propagation, species population support programs and alternatives to listings must be included.

- The definition of "taking" must be more specific, including a listing of those activities which would "harm" or "harass." Any activity not listed should not be subject to criminal penalty and should also be specified as subject to reduced civil penalty.

- The term "critical habitat" should be realistically defined and such critical habitat should be identified at the time of listing.

- The petition process for exemptions should be enhanced and improved so that it is easily understood and readily accessible to the public.

- Mandatory controls of predators to enhance recovery of species when necessary should be implemented.

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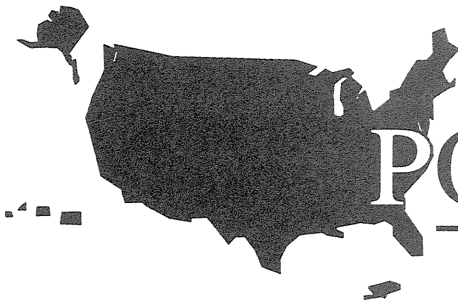

POLICY STATEMENT

Unfunded Federal Mandates

Thousands of states, counties, and cities are struggling with how to comply with mandates imposed by the federal government. In many cases, unfunded mandates from the federal government have stripped the people of their right to representative government at the state and local levels. Congress must end the practice of imposing unfunded federal mandates on our state and local governments and our businesses.

State & Local Budgets

While Americans for many years have been accustomed to reading stories in the press about huge federal deficits, more recently they have seen news stories lamenting record state budget deficits as well. In 1991, the combined deficits of 31 states totaled over $30 billion. New York and California alone accounted for $19 billion of that amount. And, local governments are facing similar budget problems. Nearly 40 percent of all counties with populations over 100,000 faced budget shortfalls in 1991. Cities were also affected. Bridgeport, Connecticut almost filed bankruptcy; Philadelphia, Pennsylvania found its credit rating lowered to junk bond levels. While some state budgets are showing improvements, the underlying problem still exists.

Federal Mandates

States must find ways to restrain or cut spending in non-essential areas. One important obstacle to spending restraint has been largely overlooked: Federal government grants-in-aid and mandates essentially force states and local governments to spend much more than necessary on everything from medical care to welfare to road building. A complex web of federal programs bind together the treasuries of federal, state and local governments. As much as 25 percent of state budgets now comes from the federal government, and up to 60 percent of some state budgets is spent on joint federal-state programs.

Most state and local officials welcome this financial assistance from Washington. However, the problem is that the money comes with strings attached. To obtain federal monies, the states and local governments must also spend funds, and abide by costly federal rules that also push up spending. Federal government assistance leads to higher budget costs for the states and local governments through two principle mechanisms: grants-in-aid and direct mandates.

Grants-in-aid provide funds to the states to achieve certain federal ends. The states must contribute a certain amount of their own funds for the project in question and abide by federal guidelines and regulations. In addition to the strings attached to grants-in-aid, the federal

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government uses regulations to exercise direct control over the states, usually by threatening to withhold money unless the states acquiesce to federal wishes. Often, the money to be withheld has no direct connection with the federal mandate to be imposed.

Environmental Mandates

Congress imposes a variety of unfunded mandates on states and localities. However, environmental mandates pose one of the most significant threats to the financial stability of states and local governments. If recent private sector and government forecasts are reliable indicators, today's environmental programs will not be affordable tomorrow. Add to today's costs the potential billions of dollars needed for pending and proposed laws and regulations, and the nation's states and local communities could well face irreversible ruin. The elected leaders of America's states, counties and cities wonder where it will all end. Some Members of Congress agree the problem is serious and say they, too, are concerned. Yet, the unfunded environmental mandates keep coming.

Over the past two decades, environmental problems have been addressed in a vacuum without carefully examination of their impacts on personal incomes, property rights, the economy, productivity or national competitiveness. Costly solutions are proposed and enacted into law before they are scientifically justified. Sometimes, they respond to perceived — rather than real — environmental risks to humans. There are no standards for evaluating costs and benefits, nor are there acceptable guidelines for setting national priorities.

NASDA Policy

The National Association of State Departments of Agriculture (NASDA) believes this intrusion into the rights of state and local governments must stop. The citizens of states and communities all across America elect state and local officials to direct the future of their states, cities and towns based on the priorities established by those closest to the problems and challenges. NASDA believes that any federal law that creates a federal mandate should also provide the funds necessary to pay all of the compliance costs associated with the mandate. This simple, workable solution will reduce the continuing financial burden that the federal government has placed on state and local governments and our businesses.

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POLICY STATEMENT

GRAZING FEES

BACKGROUND

The federal government owns more than one-third of the land in the United States. Much of this land is managed to sustain "multiple use." Federal lands produce minerals, oil, gas, timber and animal forage — vital natural resources needed by our nation's economy. Some preservationist groups are attacking these uses, including livestock production. Critics of the federal grazing program charge that livestock producers who graze their cattle and sheep on federal lands do not pay enough for the privilege.

Nearly 30,000 livestock producers graze their livestock on approximately 307 million acres of land within 16 states administered by the Department of Interior's Bureau of Land Management (BLM) and the U.S. Department of Agriculture's (USDA) Forest Service. In addition to grazing, many other uses are also available on these lands. Such uses as recreation, wildlife, timber and mineral uses occur on these lands a part of the "multiple use management" of our federal lands.

In part because of the many other uses that occur on federal lands, livestock grazing fees are low because of the value of the forage. When critics of the current fee formula compare grazing fees to private land lease rates, they fail to note that in a private land lease, exclusive use of the rangeland is controlled by the lessee, and the value of the forage is greater.

Additionally, federal land permittees face additional costs normally not applicable in a private land lease. These often include water development, fencing and weed control. It is important to remember that federal lands in the western states are those lands "too high, too dry, too cold or too hot" to be homesteaded. The result is that federal rangelands are often much less productive than private lands. Of further note is the fact that the federal government owns much of the western United States. For example, more than 60 percent of Wyoming and Idaho is owned by the federal government. More than 80 percent of Nevada is federally owned. Because of these high percentages, livestock producers in the west have little access to grazing lands that are not owned by the federal government.

Since 1979, grazing fees paid by ranchers for grazing have been set through a formula established by the Public Rangelands Improvement Act of 1978 (PRIA). This formula adjusts grazing fees on a yearly basis according to livestock production costs, beef prices and forage values. When economic conditions are favorable, fees go up. When they are unfavorable, fees go down.

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Another charge leveled at the western livestock industry is that low grazing fees encourage overgrazing. The federal agencies establish livestock numbers and the amount of time livestock can graze on federal land, regardless of the fee level. Additionally, recent surveys by respected federal and private range scientists indicate that federal grazing lands are now in their best condition in more than 100 years.

GRAZING FEE STRUCTURE

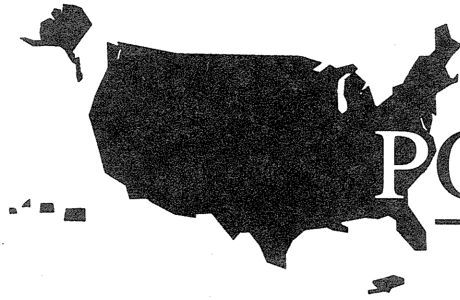
The National Association of State Departments of Agriculture (NASDA) believes the following points should be assessed and quantified in detail prior to any changes in the federal lands grazing fee or fee structure.

- Determine the actual value of grazing on federal lands. In-depth consideration should be given to actual costs of livestock production associated with federal lands, as well as differences in forage values within states, regions and nationally as it relates to the comparison of private lands and public lands.

- Determine if comparing private land lease rates with federal land grazing fees is an equitable, reasonable and defensible practice.

- Explore and consider the effects increased grazing fees will have on private investment in public lands.

- Determine and quantify the effect any and all proposed increases in grazing fees will have on local community structures including, but not limited to, real estate values, local property taxes, revenues used to fund local government services and school systems.



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POSITION STATEMENT

AQUACULTURE - S. 1288

SUMMARY

Aquaculture — the business of farming aquatic plants and animals — is the fastest growing segment of U.S. agriculture. Aquaculture is based on sustained production of renewable resources, promotes a healthy environment and provides an economically viable form of agriculture. As phenomenal as the growth of aquaculture has been over the past two decades, there remain significant constraints to realizing its full potential as a major force in American agriculture.

Catfish is the number one farm-raised fish in the United States, with 1992 production of about 460 million pounds. Among foodfish, trout is second only to catfish at 69 million pounds, followed closely by crawfish at 60 million pounds. Salmon, striped bass, and tilapia account for most of the remaining finfish production. Oysters are the predominant mollusk with clams, mussels, scallops and abalone gaining in production numbers. Shrimp production has strong potential in some areas of the United States.

Aquaculture should be considered as a form of agriculture in the broadest sense and aquaculture products should be viewed and treated as agricultural commodities. USDA financing, crop insurance, soil and water conservation, commodity grading, and other marketing services, are important to the industry. The development of the aquaculture industry will be enhanced by reaffirming the Department of Agriculture's (USDA) leadership role in aquaculture, in cooperation with established Sea Grant and National Marine Fisheries Service (NMFS) programs in the Department of Commerce, U.S. Fish and Wildlife Service (FWS) programs in the Department of the Interior, and other federal and state aquaculture programs. The industry will also benefit by elevating the priority and support of private aquaculture within USDA.

There is a need to clarify, streamline, and consolidate the regulatory constraints imposed upon the aquaculture industry. The treatment of aquaculture as a form of agriculture by local, state and federal regulatory agencies should enhance development of the industry from a regulatory standpoint and provide a positive climate for development.

The future development of aquaculture depends on availability of suitable land and water resources and minimizing conflicts with other agricultural, industrial, residential, and recreational users of these resources.

The National Association of State Aquaculture Coordinators (NASAC) prioritized issues impacting the growth of aquaculture, they are:

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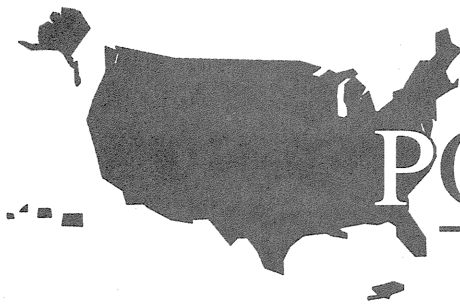
1. Fish health management, uniform certification regulation, and increased availability of health services.
2. Regulatory approval of new chemical and therapeutic compounds for aquaculture.
3. Access to capital for private aquaculture.
4. Define private aquaculture as agriculture at federal, state and county levels.
5. Aquaculture market research and development.
6. More reasonable and consistent aquaculture effluent regulation at federal and state levels.
7. Development of market news services and market statistics.
8. Product inspection and regulation concerns, including HACCP, and parity with livestock and other agriculture commodities relative to inspection.
9. Encouragement of national support for a consistent aquaculture policy for the Soil Conservation Service.
10. Coalition building between governmental agencies, aquaculture commodity groups, and state representative groups like NASAC and the International Assoc. of State Fish and Game Agencies.
11. Evaluate the impact of the U.S. Fish and Wildlife Service Lacey Act in commercial aquaculture.
12. Involvement of private aquaculture in providing fish for public stock enhancement and prohibition of unfair competition from public hatcheries in stocking private facilities.
13. Revision of wetlands regulatory processes impacting aquaculture, (e.g., recognition of aquaculture as water dependent).
14. Enhance ability of aquaculture to deal with animal (bird) depredation.

Non-indigenous species regulations have created new concerns. With the advent of zebra mussels, federal agencies have responded by addressing all introductions of exotic species. In many instances the response has the potential to severely inhibit future development of aquaculture.

Many of these concerns are addressed by a bill in the U.S. Senate, sponsored by Senator Akaka of Hawaii, S. 1288, the National Aquaculture Development, Commercialization, and Promotion Act of 1993.

RESOLUTION

The National Association of State Departments of Agriculture strongly urges the passage of S. 1288, the National Aquaculture Development, Commercialization, and Promotion Act of 1993 and urges Congress to amend current and not to pass new legislation dealing with non-indigenous species that will harm or limit the development of the aquaculture industry and at the same time not endanger the environment.



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POLICY STATEMENT

RISK ASSESSMENT BASED ON SOUND SCIENCE

No subject is a greater source of misinformation and public confusion than the subject of risk to human health, safety, and the environment. The mathematics of probability are certainly not easy to comprehend — can you distinguish the relative difference in your degree of risk between a probability of 1 in 10,000 from a probability of 1 in 1,000,000? But the issue is complicated further when seemingly qualified scientists dispute the underlying data and assumptions upon which risk calculations rest. Who are we to believe when scientists tell conflicting stories about the hazards of Alar, radon, global warming, and electric and magnetic fields? Even when the science of risk assessment is crystal clear, there are still value judgments to be made about which risks deserve the highest priority and how safe is safe enough.

DOING BETTER AND FEELING WORSE

When asked whether the actual amount of risk in life has increased or decreased, most Americans tell pollsters that we are experiencing more risk now than people did twenty years ago. This perception may reflect the growing ability of scientists to detect risks that were previously unrecognized, the proliferation in media coverage of risks on television, and a more affluent and educated society that cares more about its health and safety.

Whatever its causes, the perception that life is getting riskier is not well grounded in actuarial facts. For example, age-adjusted death rates in the United States declined sharply from 1900 until World War II, as most infectious diseases were conquered, and have continued to decline steadily in recent decades. Since 1950, life expectancy at birth has increased from 65 years to 72 years for males and 75 to 79 years for females. While much of this progress reflects gains against infant mortality, life expectancy at age 65 has also increased since 1950: from 12 to 15 years for males and 15 to 19 years for females. While there is more to living than being alive, it is important to note that many forms of nonfatal illness have also been declining during the same time period. This comforting news from mortality statistics is no grounds for complacency. The international ranking of the United States in life expectancy at birth is a disturbing 22nd for males and 18th for females. The death rates experienced by low-income and minority citizens in the United States are so large that they are often comparable to the rates of premature death observed in poor developing countries of South America, Asia, and Africa.

NEGLECTED AND OVERBLOWN

If we are to make further strides against premature death and impaired health status in the United States, it is important that citizens and policymakers focus their efforts on the big risks. One of the most serious obstacles we face is a tendency to overreact to slight risks and ignore big risks. America has tended to neglect the "routine" risks of acute trauma or "injury" from accidents and violent behavior. The most common causes of injury are motor vehicle crashes, falls, guns, and interpersonal violence. While cancer

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and heart disease cause more deaths than injury, few Americans realize that the number of life years lost, including foregone economic productivity, are about comparable for injury, cancer, and heart disease.

Our neglect of injury is reflected in the fact that we dedicate less than $1 in research to prevent or treat trauma for every $100 that is expended on research related to cancer or heart disease. As a society, we often refuse to invest $50,000 per life year saved in trauma prevention when the same investment in environmental protection would be made without much controversy. If this comparison were adjusted to reflect anticipated reductions in nonfatal health impairments, the relative promise of injury control investments would be even better.

In terms of overreaction, Americans have developed a remarkable paranoia about minute exposures to certain manmade chemical pollutants such as benzene, chloroform, dioxin, and formaldehyde. For example, some environmental policymakers are insisting that pollutants from diverse sources such as dry cleaners and oil refineries be reduced until the excess lifetime cancer risk to the "maximally exposed individual" is less than one chance in a million. A high level of concern about pollution is certainly justifiable since the resulting risks are often involuntary and uncontrollable by those who are affected. Yet it is easy to lose a sense of perspective about how tiny one in a million is.

A baby born today faces a slight but nonzero risk of being struck and killed on the ground by a crashing airplane in his or her lifetime. This involuntary risk, using actuarial data, is estimated to be about five chances in a million for the average American. It is interesting that no one argues that this risk is intolerable and that people should sleep and eat in their basements or send their children to schools with underground classrooms.

REAL RISKS VERSUS SPECULATIVE

When presented with numerical estimates of risk, it is important to ask some basic questions about how they are calculated. For example, an average citizen's risk of dying from accidents and violence can be based on hard actuarial data. In contrast, the human cancer risks resulting from low-level chemical exposures in air, food, and water are rarely based on direct observation of human populations. Typically, they are based on extrapolations to humans from the experiences of rodents who are exposed to large doses of a chemical for a lifetime. Since the scientific uncertainties in extrapolating risks from high-dose rodent tests to low-dose human exposures are huge, any numerical risk estimate computed in this way should be regarded as speculative.

Within the field of environmental health, some risks are far less speculative than others. The risks of childhood lead poisoning, indoor air pollution, and occupational exposures to chemicals are relatively well documented but receive only modest attention by citizens and policymakers. Some of the noncancer health effects from pollution, ranging from aggravation of asthma to neurobehavioral effects, have a stronger technical foundation than is commonly realized. In contrast, many of the traditionally popular and expensive environmental protection programs, including control of hazardous wastes and chemicals in drinking water, have a weak foundation in risk analysis.

DECISIONS BASED ON SOUND SCIENCE

No magic risk number can substitute for informed and thoughtful consideration by accountable officials who work with the public to make balanced decisions. Public officials shoulder the responsibility of determining which involuntary threats to human health are unacceptable and which are acceptable based on the best available science.

The National Association of State Departments (NASDA) supports Congressional efforts to require all federal government bodies, including regulatory and scientific agencies, to provide a risk/benefit analysis on proposed actions.

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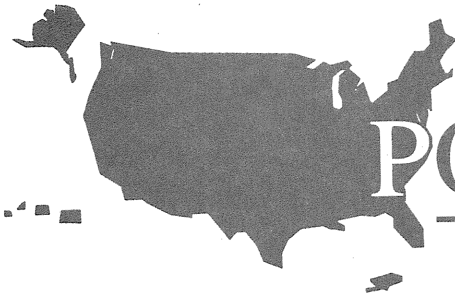

POLICY STATEMENT

NORTHEAST INTERSTATE DAIRY COMPACT

The National Association of State Departments of Agriculture advocates federal legislation such as that which would allow for the Northeast Interstate Dairy Compact and the formulation of similar organizations in other regions.

The Northeast Interstate Dairy Compact would establish an interstate commission with power to raise the price paid to dairy farmers by milk processors. The commission's authority would complement the existing federal milk marketing program, which sets a regulated, minimum farm-price for milk through an assessment on processors. The Compact commission would be authorized to raise the farm price above the federal minimum level.

The Compact is designed primarily to respond to the chronic problem of inadequate dairy farm prices, which increasingly threatens the viability of the region's dairy industry. Given the importance of the industry and dairy farms to the economies, environment and culture of the states, each state has repeatedly tried to address the problem. These individual state efforts have all run afoul of the interstate commerce clause of the U.S. Constitution. Joint state action under the Compact, premised on Congressional approval, overcomes this constitutional infirmity.

While designed primarily to assist the region's dairy farmers, the Compact is premised also on the assurance of control by the region's consumer states over the regulatory process. Specific Compact provisions include: consumer representation from each state, a requirement that two-thirds of the states, rather than a simple majority, approve any price regulation, authority for each state to exempt itself from the regulation even if approved by all the other states, and a cap on the commission's pricing authority.

The commission's pricing authority would be exercised through a formal hearing process. Testimony would be presented by all market participants, with concentration on farmer costs of production and consumer ability to pay. After deciding upon an amount, the commission would hold a producer referendum on the proposed price. If approved by the producers, the Compact-established price would become the regulated price for the transaction between processor and farm for all fluid milk consumed in the Compact region. The regulated price would be legally enforceable by the Commission in state and federal court.

The Compact-established price would be administered in much the same manner as the federal program. As with the federal program, the proceeds of the Compact assessment would be pooled by the Commission and paid out to dairy farmers. Because of this similarity in design, the federal program

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administrator is expected to assist in the administration of the Compact. This will keep administration costs to a minimum. Any incidental administration costs will be borne by processors; there is no cost to member states or the federal government.

Most important, as with the federal program, all milk purchased by fluid processor for sale in the Compact region would be subject to the Compact assessment, regardless of the location of the supplying farmer. For example, milk purchased from a New York farmer for ultimate sale in the Boston market would be subject to the assessment, even if New York was not in the Compact.

This authority to assess milk purchased from farmers residing in non-Compact states is the primary benefit of establishing the Compact with the approval of Congress. Regulation of the price of imported milk would ensure that the price is not undercut, so that all processors and farmers in the Compact region compete on an equal footing.

Coupled with the pricing authority, the Compact directs the commission to devise a method to ensure the assessment does not result in increased, surplus milk production. The Compact's continued viability will depend on the effectiveness of this program.

The commission's regulatory authority would apply only to the fluid, or bottled, component of the marketplace. Processors purchasing milk for manufacturing purposes such as cheese and ice cream would not be subject to a Compact regulation.

Under the interstate compact clause of the United States Constitution, to be established, the Compact must be enacted into law in identical form by at least three member states of the proposed Compact region, and be ratified by Congress. The region includes the Atlantic coast states from Maine to Virginia, Pennsylvania, and states contiguous to these states.

A nucleus of the six New England states — Vermont, New Hampshire, Maine, Rhode Island, Connecticut, and Massachusetts — have enacted identical Compact language. The Compact passed by these states is now being prepared for formal presentation to Congress.

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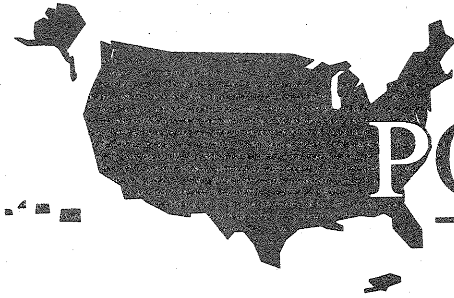

POLICY STATEMENT

FEDERAL NOXIOUS WEED ACT AMENDMENT

Noxious weeds negatively impact human endeavors, both in agricultural and non-agricultural environments. The need for noxious weed population management and improved legislation is unarguable.

The National Association of State Departments of Agriculture (NASDA) supports an amendment which rewrites the Federal Noxious Weed Act (FNWA) (P.L. 93-626) to correct interpretations of the FNWA which, as currently enacted, create serious problems which prevent the development of sound regulatory and enforcement programs both at the federal and state levels.

This amendment is valuable to the entire agricultural industry as it is designed to:

- Improve the exclusion, eradication and control of foreign noxious weeds in the United States through the regulation of their movement in foreign and interstate commerce. The annual cost of foreign, (alien) noxious weeds in the U.S. is now estimated to be in excess of $20 billion per year.

- Provide the United States Department of Agriculture and the States with increased authority to protect the U.S. from alien weeds.

- Contribute to the development of sustainable agricultural systems by promoting the efficient use of our natural resources in the production of food and fiber resulting in minimal impact on the environment.

- Direct the Secretary of Agriculture to develop an integrated management plans for each foreign noxious weed introduced into the U.S. for the geographic region or ecological range where the weed is currently found in the U.S.

- Expand the scope of the Act to include exotic invasive plants that threaten to interfere with native ecosystems or agroecosystems.

- Provide for the establishment of a Noxious Weed Technical Advisory Panel, which would consist of members who have professional or working knowledge of native ecosystems and agroecosystems. This Panel would provide the Secretary of Agriculture with guidance in implementing the law.

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- Give the Secretary of Agriculture the ability to prevent the entry of foreign weed species that appear at ports of entry that are not on the federal noxious weed list.

- Clearly prohibit the movement of federal and foreign noxious weeds except under permit issued by the Secretary of Agriculture.

- Establish a weed classification system which would allow the U.S. Department of Agriculture to categorize the status of federal and foreign noxious weeds species, that are not in the U.S. These species need to be addressed to prevent their entry, and if introduced action can be taken immediately to suppress or eradicate and prohibit their movement.

Noxious weeds create problems that are faced by all states and territories. NASDA supports the control of noxious weeds in any manner that is consistent with efficient and prudent management practices, including amendment of the Federal Noxious Weed Act (P.L. 93-626), as described above.

Undesirable plants are exploding and increasing at an alarming rate on lands administered by the federal government. The rapid expansion of noxious weeds is a threat to healthy land. Sound ecosystem management can not be achieved under existing federal policies. Federal agencies need to develop and fully carry out a complete Integrated Weed Management System to achieve ecosystem management on federal lands.

Five issues have been identified to help achieve, maintain, and restore healthy ecosystems on federal lands in the United States: 1) Education; 2) Coordination; 3) Memorandum of Understanding to improve coordination; 4) Specific federal policy on the management of undesirable plants: and 5) Funding needs to be budgeted and priorities must be set for the management of undesirable plants.

Seven major deficiencies in the undesirable plant management program currently exist: 1) funds and staff; 2) policy guidance and awareness of the problem; 3) basic information on expansion of weed populations; 4) attention to non-rangelands; 5) active and preventive programs; 6) training beyond pesticide application; and 7) coordination with other federal, state and county agencies.

The National Association of State Departments of Agriculture supports efforts to accomplish the five issues and overcome the seven deficiencies listed above.

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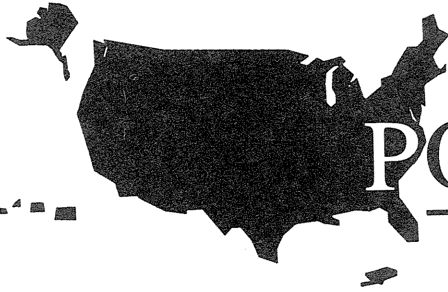

POSITION STATEMENT

OSHA REFORM LEGISLATION — S. 575/H.R. 1280

SUMMARY
The National Association of State Departments of Agriculture agrees that safety in the workplace is a primary concern for all. The National Association of State Departments of Agriculture supports the findings of the Coalition On Occupational Safety and Health reported in three recent reports. The reports on job-related deaths indicate that safety and health conditions have been steadily improving within American workplaces since the passage of the Occupational Safety and Health Act in 1970, when 15,000 fatalities were reported.

National Association of State Departments of Agriculture recognizes that the occupational health and safety records are far from perfect, and that no workplace injury, illness or fatality should ever be deemed acceptable.

Congressional findings indicate that progress has been made in reducing workplace deaths, injuries and exposure to toxic substances through the efforts of federal and state, employers, employees and employee representatives. Despite these findings some members of Congress find that work related injuries, illnesses and deaths continue to occur at rates that they consider unacceptable and have proposed harsh penalties and burdensome procedures on employers.

Senate Labor Committee Chairman Edward M. Kennedy of Massachusetts, introduced S. 575 and House Education and Labor Committee Chairman William Ford of Michigan, has introduced H.R. 1280, the "Comprehensive Occupational Safety and Health Reform Act", to revise the Occupational Safety and Health Act of 1970. These bills have been placed on a fast-track in Congress.

The Clinton Administration has fully endorsed S. 575 and H.R. 1280 which would place substantial new safety and health burdens on employers. The bills would:

- Require all employers to establish written safety and health programs to identify, evaluate, document and correct any workplace safety and health hazards.

- Require employers with 11 or more workers to establish joint labor-management safety committees; the bill has no exemption for family member employees.

- Elevate OSHA's criminal offenses to the felony level with up to 10 years imprisonment for a willful violation. "Willful" is not defined in the bills.

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- Impose new paperwork, recordkeeping and reporting requirements.
- Require employers to establish safety and health programs that provide for training and education of employees at the time of employment, in a manner readily understood by the employees.
- Require refresher training on at least an annual basis and when changes in conditions or operations occur that may expose employees to new or different safety or health hazards.
- Allow employees the right to refuse to work at any time if they have a "reasonable apprehension" of a serious injury or imminent danger to themselves or another worker.
- Employers would be required to shut down or curtail operations until the employee or an outside source deems that any alleged hazard is corrected.

RESOLUTION

The National Association of State Departments of Agriculture opposes the significant broadening of OSHA's powers and strongly urges Congress not to pass S. 575 and H.R. 1280.

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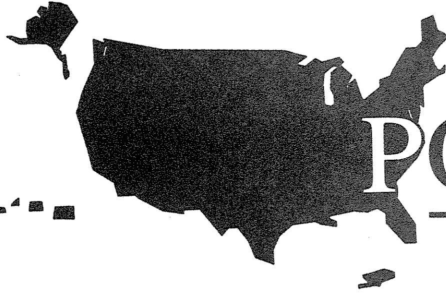

POLICY STATEMENT

PRIVATE REAL PROPERTY RIGHTS

BACKGROUND

In recent decades, the intrusion of federal regulations into property owners' land use decisions has increased dramatically. The result has been an unprecedented surge in litigation directed toward the federal government. Much of this litigation has been predicated on the theory that a particular federal land use regulation has violated rights guaranteed by the "just compensation clause" of the Fifth Amendment to the United States Constitution.

Unfortunately, the exact scope of the rights guaranteed by the "just compensation clause" has proved elusive. Landowners seeking to determine their rights under the Constitution face the prospect of protracted litigation, open-ended legal costs, and an uncertain outcome. At the same time, regulators are themselves uncertain over the extent of the responsibilities under the Constitution with respect to private property rights.

In 1988 President Ronald Reagan issued Executive Order 12630 which required agencies to review the impacts of regulations on property rights. The Executive Order, still in effect, does not stop the taking of private property under regulatory activity; it merely directs the federal agencies to assess the takings of their regulatory activity.

FEDERAL PROGRAMS AND PRIVATE REAL PROPERTY

The constantly evolving national debate over the need to protect our environment and conserve our country's natural resources, while at the same time ensuring that our rights to private property remain secure, presents one of the most difficult policy and legal issues now before Congress. There are a wide range of federal programs that either directly or indirectly affect the use of private property. The development and implementation of many of these programs should, to the maximum extent practicable, reflect the need to avoid unnecessary and unwarranted impacts on the sanctity of private property. Programs like the section 404 program under the Clean Water Act, the Endangered Species Act, the Clean Air Act, agricultural programs, including the Swampbuster and Sodbuster programs, and the Coastal Zone Management Act are prominent examples. Impacts on private property are also caused by federal water resource, grazing, mining and timber harvesting decisions. Compensation for economic losses resulting from such laws is seldom offered by the government, and often must be fought in court by the landowner.

THE IMPORTANCE OF PRIVATE REAL PROPERTY

In our rush to protect the environment and conserve our natural resources, our nation must never lose sight of the important role that private property plays in our society. Property rights were viewed as a basic right by our forefathers.

According to the political theory espoused by John Locke, a primary function of government is to protect the inalienable right to property. This concept appears in the writings of Thomas Jefferson, Adam Smith, Montesquieu, William Blackstone, John Adams, Samuel Adams and Alexander Hamilton, as well as many others. An eighteenth century judicial opinion best reflects this concept, wherein the Court noted that "the right of acquiring and possessing property, and having it protected, is one of the natural, inherent and inalienable rights of men.... The preservation of property, then, is a primary object of the social compact." *Vanhorne's Lessee v. Dorrance*, 2 U.S. 310 (1795).

Similarly, and perhaps more importantly, one of our founding fathers, James Madison, wrote in Federalist No. 10 that the protection of "the diversity of the faculties of men, from which the rights of property originate, ... is the first object of government." He echoed this theme when he added that the "government is instituted no less for protection of the property than of the persons of individuals." (Federalist No. 54) Thus, Madison helped ensure that the Bill of Rights to the United States Constitution expressly provided, in the Fifth Amendment, that "nor shall private property be taken for public use, without just compensation."

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This Constitutional protection was necessary due to the economic importance of private property both at the birth of the nation and today. Historically, our national property law generally can be characterized as attempting to establish rules which promote certainty and security. Without such rules, economic transactions would be too unstable and the jobs dependent upon those transactions would be far from secure. Also, lending institutions are dependent on the security of the right to private property and without such security the flow of capital would be greatly diminished. Taxes on private property support our school systems, fire departments, police departments and other social services. Already, federal programs such as the wetlands program are impacting the way property is being appraised, whether for sale or tax assessment purposes.

Although our nation has not yet experienced the potential national economic crisis that could result from our failure to adopt programs that are sensitive to private property rights, the time is fast approaching. Up until approximately the past 25 years, our nation's federal laws had little readily discernable affect on the use of private property. For the most part, issues involving private property centered on local zoning regulation and economic regulation of business activity. Such regulation may have diminished property values, by restricting certain uses, but it rarely required that private real property be left in its natural state. Now, however, federal programs adopted in the last 25 years can effectively preclude all economically viable uses of property, if such uses would require altering the natural state of the property. It is important that we develop programs that are sensitive to these concerns, lest we unexpectedly find ourselves in a crisis far more devastating than the savings and loan bailout.

CONSTITUTIONAL STRUCTURE: EXISTING TAKINGS LAW

Unfortunately, the Congress has never adopted legislation that addresses the issue of private property rights and expresses as a matter of policy, just how far the federal government and its agencies and departments shall exercise its power to regulate the use of private property. In the absence of such legislation, the "law of private property rights" is contained in the judicial interpretation of the Fifth Amendment to the Constitution. These cases define the constitutional levels of the power of the federal government to regulate the use of private property.

The Fifth Amendment to the United States Constitution directs that the federal government must pay just compensation when it takes private property for public purposes. It is now well understood that governmental regulation, when it reaches a certain level, can constitute a taking of private property for which just compensation must be paid. Justice Oliver Wendel Holmes wrote in 1922 that "while private property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal v. Mahon*, 260 U.S. 393, 415 (1922). Unfortunately, trying to describe, at least in any coherent and comprehensive fashion, just what circumstances must exist before a governmental regulation constitutes a taking is a difficult — if not impossible — task. For many years the Supreme Court even acknowledged that its decisions were essentially "ad hoc" factually-oriented inquiries.

Nevertheless, a few principles now seem relatively clear. A regulation can constitute a "taking" if it *either* fails to advance substantially a legitimate governmental interest *or* it deprives a property owner of all economically viable uses of the property. When considering whether a regulation "takes" property under the second prong of this formula, the Court has held that three factors ordinarily should be explored: first, the character of the governmental action; second, the economic impact on the property owner; and third, the extent to which the governmental action interferes with the owner's reasonable investment-backed expectations.

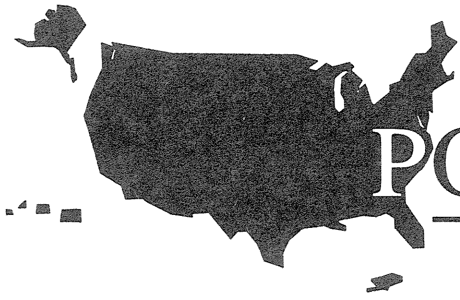
The Court's recent decision in *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992) adds some further clarification. There, the Court noted that a taking could occur, regardless of the asserted public purpose of the regulation, if the governmental action either (1) effected a physical invasion of the property; or (2) prohibited *all* economically viable uses of the real property which were previously permissible under relevant state property and nuisance law.

THE TASK OF ACHIEVING DUAL OBJECTIVES

If Congress mandates that federal agencies must consider the likely impact of their programs on private property, it will provide the blueprint for developing programs that balance the need to protect and conserve our natural resources with the concerns of private property owners. To avoid the conflict over private property rights, our nation should move away from the "central command and control" model and toward programs that provide incentives for landowners to conserve appropriately defined natural resources, with voluntary compliance being the ultimate goal.

Federal programs are neither effective nor fair if they do otherwise. They become tools for abuse and are often expanded through court decisions beyond what may have been intended by Congress. This is particularly true where Congress has authorized agencies to regulate, or the courts have allowed citizen suits to direct federal policy. And they impose on certain unfortunate landowners the obligation to dedicate their property to the — albeit — valid public purpose of preserving our natural resources, often without sufficient opportunity for those landowners to protect their interests. It is imperative that the Congress understand the impact of regulatory programs on private property and prevent the involuntary "taking" of private property by the government.

The National Association of State Departments of Agriculture (NASDA) urges Congress to pass and to amend current legislation to eliminate government activities that infringe on private real property rights without compensation. NASDA also urges Congress to move toward incentive based programs for natural resource protection with the ultimate goal of private/public voluntary cooperation to improve those natural resources.



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POSITION STATEMENT

FARM LABOR LAWS - H.R. 1173

SUMMARY

Many factors affect American farmer's and rancher's ability to provide a safe and economical food supply. One of the most important is the availability of a hired labor force, both full time and seasonal. Many factors affect farm labor availability such as immigration patterns, consumer demand, foreign trade and local, regional and area, off-farm work opportunities as well as labor laws. Hired farm labor is most important on fruit, vegetable and horticultural farms. Fruit, vegetable and horticultural specialty farms spend nearly six times as much on hired and contract labor per farm as do other types of farms. However, seasonal or hired labor is from time to time critical to all farmers and ranchers.

Legislation has been introduced in the 103rd Congress that would amend the Migrant and Seasonal Agriculture Worker Protection Act (MSPA) to make it applicable to all agricultural workers. (Immediate family members of the employer would continue to be excluded). This will have a major economic impact on the ability of producers to remain in operation and meet the food needs of America.

The Migrant and Seasonal Agricultural Worker Protection Reform Act of 1993, (H.R. 1173), introduced by Representative George Miller of California includes all farm workers including those involved in dairy, livestock, grain production, poultry and all other agricultural employment. It also expands the liability to growers and others including food packers and processors of farm labor contract (FLC) activities and imposes new requirements (including mandatory child care and changes in housing and transportation laws) on both growers and FLCs.

H.R. 1173 also includes the following provisions:

- Incorporation of other federal, state and local health and safety laws into the MSPA, including pesticide laws and regulations, thus enabling private suits for tort-like damages to be brought under those statues.
- Requirement of written disclosures to each employee as to the precise days, weeks and months of employment, with a right to sue for remainder of pay and benefits if the period is shortened or changed.
- Unprecedented new procedural rights for parties filing MSPA complaints with the Labor Department;

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- Increased civil monetary penalties and damages available in private suits, in some cases going as high as $250,000 per plaintiff.

- Reasonable attorneys' fees and expert witness fees would have to be awarded by a court to a prevailing worker plaintiff.

- Agricultural employers of 25 or more covered workers would be required to provide child care to their workers.

H.R. 1173 is not a product of consultation between farmworker representatives and employers. The bill fails to include one major MSPA reform that employers have been seeking for the past two years--reversal of the 1990 *Adams Fruit* decision by the Supreme Court which allows workers to sue for personal injury under MSPA even if they are covered by workers compensation. The bill specifically repeals a provision enacted last year which provides a nine-month moratorium on new *Adams Fruit* cases.

RESOLUTION

The National Association of State Departments of Agriculture supports continuation of the current Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and strongly encourages Congress not to pass H.R. 1173. NASDA further supports the reversal of the 1990 *Adams Fruit* decision by the Supreme Court.

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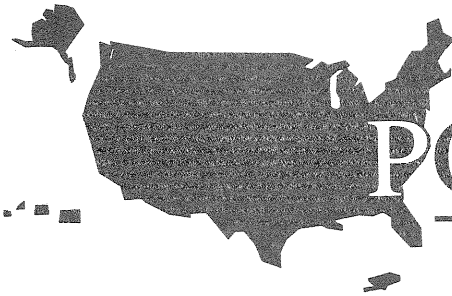

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POLICY STATEMENT

INTERSTATE SHIPMENT OF STATE-INSPECTED MEAT & POULTRY

BACKGROUND

In 1967, the Meat Inspection Act of 1906 was amended by the Wholesome Meat Act and renamed the Federal Meat Inspection Act. In addition to other changes, the state-federal cooperative inspection program was established which required state inspection programs to be "at least equal to" the federal inspection program, and that products receiving state inspection are "solely for distribution within such state." The 1968 Wholesome Poultry Products Act which amended the Poultry Products Inspection Act, extended the same provisions to poultry inspection.

The acts, while stressing the need for cooperation between federal and state authorities, give the United States Department of Agriculture (USDA) clear responsibility for setting a national standard for meat and poultry inspection. USDA is required to monitor state programs and to assume direct responsibility at state plants when a state fails to develop or effectively enforce inspection requirements "at least equal to" those under the acts.

NASDA POLICY

The National Association of State Departments of Agriculture (NASDA) strongly believes that Congress should amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to allow the interstate shipment of state-inspected meat and poultry and products derived therefrom.

STATE INSPECTION PROGRAMS ARE "EQUAL TO" FEDERAL INSPECTION PROGRAMS

USDA's Food Safety and Inspection Service (FSIS) certifies that each state inspection program is "equal to" federal inspection requirements. This is accomplished by FSIS review of state performance plans, results of comprehensive reviews, feedback from Inspection Operations field supervisors, and documentations submitted with Annual Reports. In fact, this annual scrutiny of state programs is more frequent and stringent than the internal federal audits of FSIS conducted by the Office of Inspector General and other agencies.

The annual State Performance Plan which is evaluated for "equal to" status, includes a review of state laws, state regulations, funding and financial accountability, resource management (staffing, training, program operations), facilities and equipment, labels and standards, in-plant reviews/enforcement, specialty programs, and laboratories.

FSIS has been conducting the "equal to" review since passage of the acts in 1967 and 1968. Since that time, the Agency has *never* unilaterally found that a state inspection program should be discontinued due

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to inadequacies in its inspection program. In other words, since 1967 and 1968, FSIS has found state programs to be "at least equal to" the federal requirements.

STATE-INSPECTED PRODUCTS CURRENTLY SHIPPED INTERSTATE

The mission of state meat and poultry inspection programs is to provide the consumer with a wholesome, unadulterated product that is properly labeled and safe. The programs exist to protect the public's health. That is why state inspection programs currently inspect "non-amenable" products which are not regulated by the federal inspection program. Non-amenable products — such as deer, buffalo, squab, and pheasant — that are inspected by a state-inspected facility are allowed to be transported across state lines. These shipments have been allowed for quite some time with little or no evidence of any risk to the consuming public.

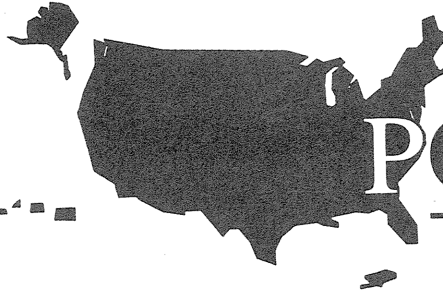
Food safety is indeed the number one issue to be considered in any discussions of the inspection system. The fact that state-inspected non-amenable product has been proven to be safe for interstate shipment and public consumption makes clear that the prohibition of interstate shipment of state-inspected meat and poultry has nothing to do with public health and food safety.

INTERSTATE SHIPMENT OF STATE-INSPECTED MEAT ONLY IS FAIR

The issue of interstate shipment of state-inspected product is a simple fairness issue. While the acts require all state meat and poultry inspection programs to be "at least equal to" federal standards, they prohibit the sale of the product in interstate commerce. For the most part, these state-inspected plants are owned and operated by small business owners who are suffering the economic consequences of the prohibition which provides an unfair marketing advantage to large corporations. In many cases, the products inspected in a state-inspected facility are specialty products. The specialty items prepared by small operators are not economically viable for a large operation.

Congress passed the North American Free Trade Agreement (NAFTA) last year. Passage of that historical trade agreement will allow Mexican-inspected meat to be shipped into the United States and moved interstate as long as the Mexican inspection program is "equal to" U.S. federal standards — the same standard applied to state inspection programs. It seems only fair that Congress now provide small business owners in the United States the same opportunity Congress provided to Mexico.

The intrastate and interstate flow of commerce is a basic protection provided by a number of laws and regulations. The prohibition of interstate shipment of state-inspected meat — the only such prohibition of any food product — disrupts that free flow of trade and restricts the ability of American small business entrepreneurs to economically compete against foreign producers and large domestic corporations.



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POLICY STATEMENT

ADEQUATE FUNDING FOR THE MARKET PROMOTION PROGRAM

The National Association of State Departments of Agriculture (NASDA) believes that the Market Promotion Program (MPP) is a proven and vital tool which helps to build international markets for U.S. agricultural products. Over the past five years, the value of U.S. agricultural exports has ranged between $35 billion and $40 billion annually, and agricultural trade surpluses have run between $14 and $18 billion per year. This makes agricultural products America's number one export, providing a half-million farm jobs and another half-million non-farm jobs. NASDA's principal objective is to ensure that U.S. farm and ranch families have the opportunity to survive and prosper in the global agricultural marketplace. NASDA believes that international promotion of our agricultural products is an important part of the foundation for the future prosperity of farmers and ranchers in the United States.

AGRICULTURAL TRADE IMPACTS ECONOMY

The agricultural export boom of the 1970s ended with U.S. overseas sales dropping from almost $44 billion in 1981 to less than $30 billion by 1985, in part due to unfair trade practices of some competitors. In an effort to help counter these unfair trade practices Congress authorized the Targeted Export Assistance (TEA) Program using Commodity Credit Corporation (CCC) funds. This program was used extensively in the late 1980s and converted into the Market Promotion Program in 1990.

Since TEA and MPP have been used, agricultural export growth has been substantial. While precise measurement of linkage between export growth and the market promotion programs is difficult in a complex economic system, the programs have had beneficial impacts in several respects. One significant contribution of the programs was to bring a new emphasis to expanding farm sector exports through market development and promotion. In addition, the programs have proved useful in leveraging resources for market promotion from participants and third-party cooperators. Program expenditures of $750 million during fiscal years 1986 to 91, generated an additional expenditure of $790 million by participants and third-party cooperators, bringing the total resources for export promotion to $1.5 billion.

Export expansion has meant job creation. USDA estimates that 860,000 jobs are linked directly or indirectly to agricultural exports and an average of 25 new jobs are created for each million dollars in export sales. However, TEA and MPP programs target markets where export-linked job creation is higher than the average, such as fruit (50 jobs per $1 million in exports), nuts (51 jobs per $1 million), and red meat and poultry processing (37 jobs per $1 million). This suggests that substantially more than 22,500 new jobs likely are created by a $200 million program.

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Export sales also expand economic activity in both the farm and non-farm sectors. Farmers and ranchers purchase fuel, fertilizer and other inputs to produce export commodities which create economic activity and create jobs in food processing, manufacturing, trade, packaging and transportation. USDA estimates that each dollar of export sales generates another $1.40 in income to support activities. The 1993 projected agricultural export value of $42.5 billion will generate about $63.3 billion in supporting activities, totaling $106 billion in economic activity.

PROGRAM BACKGROUND

From 1954 to 1974, U.S. agricultural exports were constrained by world economic conditions, government production limits and price supports, and international exchange rules. From 1971 to 1981, U.S. agricultural exports increased from less than $8 billion to a record $43.8 billion. Agricultural trade surpluses increased enough during this period to offset more than one half of the non-agricultural trade deficit. This boom collapsed in the early 1980s as the dollar appreciated, trade tensions rose and cost-indexed U.S. federal commodity price supports were increased. Many U.S. commodity prices were well above world market prices and unable to compete internationally. U.S. agricultural exports declined by more than $14 billion between 1981 and 1985. Without the contribution previously provided by agricultural exports the over all U.S. trade deficit increased substantially.

In 1985, Congress took two important steps in the Food Security Act to enhance agricultural exports — reduction of domestic price supports and creation of the Targeted Export Assistance Program. This program was largely in response to the European Community's trade subsidies on agricultural products. TEA funds were allocated from the Commodity Credit Corporation (CCC) and payments were in the form of CCC certificates. Eligibility was determined by three criteria: a U.S. commodity group had to be adversely affected by foreign unfair trade practices; supplies of the commodity had to be adequate; and processed commodities had to contain 50 percent U.S. content.

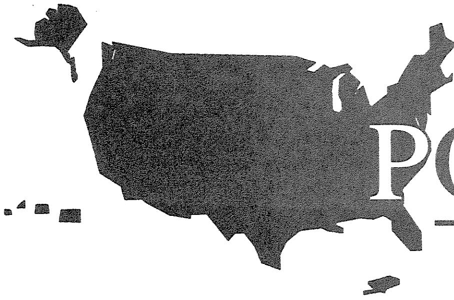
The Food, Agriculture, Conservation and Trade Act of 1990 continued the trade promotion activities but changed the name of the program to the Market Promotion Program. MPP more generally encourages the development, maintenance and expansion of commercial export markets and is administered on a cost-share basis. The USDA Foreign Agricultural Service administers the program through CCC cash payments. MPP activities include foreign market research, foreign market development, in-store promotions and consumer education programs. Considerable emphasis is placed on processed commodities and high-value agricultural products instead of bulk commodities.

MPP IMPACT

Research studies currently available uniformly conclude that the TEA/MPP programs helped address significant problems, that they increased access to target markets, that they provided resources to support well-proven market development programs, and that export sales increased significantly in response to funding input. The MPP program has generated as much as $2.2 billion in economic activity and the value of exports generated by MPP is estimated at $1.4 billion.

NASDA POLICY

NASDA supports adequate federal funding of the Market Promotion Program in order to maintain and expand export markets. Continued funding will ensure that U.S. farmers and ranchers have the opportunity to prosper in the global marketplace, resulting in greater national economic growth.



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POLICY STATEMENT

Export Enhancement Programs

The Export Enhancement Program (EEP) helps products produced by U.S. farmers meet competition from subsidizing countries, especially the European Community. Under the program, the U.S. Department of Agriculture (USDA) pays cash to exporters as bonuses, allowing them to sell U.S. agricultural products in targeted countries at prices below the exporter's costs of acquiring them. Major objectives of the program are to challenge unfair trade practices, encourage other countries exporting agricultural commodities to undertake serious negotiations on agricultural trade problems and expand U.S. agricultural exports.

The EEP was announced by USDA on May 15, 1985, and reauthorized by the Food, Agriculture, Conservation, and Trade Act of 1990. The 1990 legislation requires the Commodity Credit Corporation (CCC) to allocate at least $500 million in funds or commodities each fiscal year through 1995 to carry out the program.

The proposed 1995 budget assumes that as much as $1.0 billion will be awarded during 1995, which is unchanged from the 1994 estimate - no increase.

The EEP helps U.S. agricultural producers, processors, and exporters gain access to foreign markets. The program makes possible sales of U.S. agricultural products that would otherwise not have been made due to subsidized prices offered by competitor countries.

Commodities currently eligible under EEP initiatives are wheat, wheat flour, semolina, rice, frozen poultry, barley, barley malt, table eggs and vegetable oil. USDA operates similar programs to assist in the export of dairy products and sunflower seed and cottonseed oils.

Exporters participating in the EEP must meet qualification standards. These include: 1) documented experience of selling for export, within the preceding three calendar years, the agricultural commodity to be exported under EEP (or a similar agricultural commodity as determined by CCC); 2) an office and an agent for service of legal process in the United States (names, addresses); 3) a description of business structure--how and where incorporated, etc.; and 4) a certified statement describing participation, if any, during the past three years in U.S. Government programs, contracts, or agreements. In addition to the above qualifications standards, exporters are required to post a performance security before submitting a request for a bonus.

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EEP initiatives must have the potential to further U.S. trade policy strategy of opposing competitors subsidies or other unfair trade practices by displacing other countries subsidized exports in targeted countries.

Targeted countries are those where U.S. sales have been non-existent, displaced, reduced or threatened because of competition from subsidized exports.

EEP initiatives must demonstrate the potential to develop, expand or maintain markets for U.S. agricultural commodities while considering the U.S. historical market share and long-term commercial relationships. Individual EEP initiatives will not be approved if they would have more than a minimal effect on subsidizing exporters in the market.

USDA administers several other export programs to facilitate sales similar to EEP:

- The Dairy Export Incentive Program (DEIP), which is expected to continue near the 1994 level in the proposed 1995 budget.

- The Sunflower Oil Assistance Program (SOAP) and the Cottonseed Oil Assistance Program (COAP) were used to make bonus payments to facilitate the export sales of these vegetable oils. NO FUNDING is provided in the 1995 proposed budget for SOAP or COAP. These programs were losers in the TPRG discussions. Funding for vegetable oils will be expected to be made under the EEP.

EEP and export initiative programs that challenge unfair trade practices by other countries are critical to moving American agricultural products in foreign markets. Producers at home on farms and ranchers do not have the facilities to compete against these types of unfair trade barriers.

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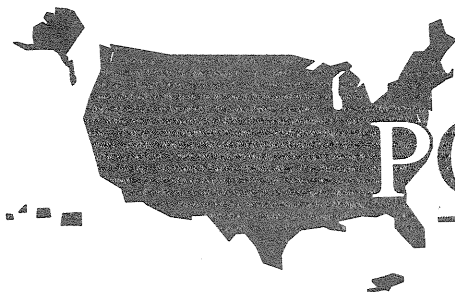

POLICY STATEMENT

ETHANOL USE IN REFORMULATED GASOLINE

The U.S. Environmental Protection Agency (EPA), in December 1993, published a proposed rule to modify the Reformulated Gasoline Program (RFG) to require that 30 percent of the oxygenates required in the RFG program would come from renewable oxygenates such as ethanol. EPA concluded a public hearing and comment period on the proposal on February 14, 1994, and is scheduled to make its final decision at the end of June, 1994.

The National Association of State Departments of Agriculture (NASDA) strongly supports this proposed rule to create a renewable oxygenate program. Ethanol is one of the products that could be used to meet the requirements set forth in the proposed rule and ethanol affects agriculture in many positive ways.

EPA and the Administration should move expeditiously to finalize this rule. It is imperative that no delays be allowed. Having from July 1994 to January 1995, gives fuel refiners, blenders and distributors plenty of time to identify and acquire the renewable oxygenates they will need to meet the requirements of this program. Any shorter amount of time puts a burden on the system. It is imperative from the refiners' standpoint, as well as from the standpoint of the producers of renewable oxygenates, that the guidelines for this program be established and ascertained as far in advance of the beginning of the program as possible. Delaying the finalization or implementation of this program would seriously damage its integrity and any beneficial effects it will have.

The nation's renewable oxygenate producers will respond in terms of assuring supply and availability in all areas of the program. They must, however, be assured of its implementation as soon as possible in order for them to commit to full or increased capacity.

The proposed program is intended to encourage the use of any renewable oxygenate. "Renewable oxygenates" are those oxygen-bearing hydrocarbons obtained from biologic resources that replenish, naturally or otherwise, a substantial portion of their biomass on an annual basis. As leaders of the state departments of agriculture, NASDA's members are most familiar with ethanol, the alcohol fuel made from the starches and sugars of organic materials. However, this is not just a corn issue. In fact, in many states, corn and ethanol have little to do with each other. An important fact is that ethanol can be made from many different feedstocks. In California, plants produce ethanol from the waste stream of cheese factories. In Idaho, plants produce ethanol from the waste stream of potato processing facilities. In Louisiana, plants produce ethanol from molasses and in Montana, ethanol is produced from wheat. In the South, in the not too distant future, there will be plants that produce ethanol from elephant grass and fast growing trees. The economic impact of ethyl alcohol production knows no geographic boundaries, since production facilities can utilize whatever feedstock is indigenous or available in the area.

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The ethanol industry currently is producing about 1.3 billion gallons of ethanol. If this were to expand to over 3 billion gallons of production, which is possible by the year 2000 with the increased use of ETBE, corn prices would rise over $.20 per bushel, cutting the cost of the government's farm program payments dramatically. According to a recent USDA report, it is estimated that for each 100 million bushels of corn used to create ethanol, 2250 new rural jobs are created. Therefore, it could be expected that over 17,000 new industry jobs would be created in addition to the 7,500 agricultural jobs and 6,000 industrial jobs that would be created.

The increased demand for corn would create over $1.7 billion in new farm income, from the marketplace, not the government, and the economic impact from the new jobs created would be measured in the billions. That just looks at the direct impact from the growth of the industry. If the construction and related jobs created are also considered, the impact is immense.

NASDA believes there will be no problems associated with supply in any of the RFG areas. We believe that the credits trading portion of the program will alleviate any minor logistics problems that may arise.

The 30% requirement for renewable oxygenates is an appropriate standard for beginning the renewable oxygenates program. With the current production level of oxygenates, there is no need for lead-time or phase-in requirements. The program, since it still allows for market control and sets specific limits on seasonal use, should have no impact on the finalized reformulated gasoline program, other than to create a more competitive economic environment, which will benefit consumers.

As noted earlier, the ethanol industry currently is producing around 1.3 billion gallons per year. There is about 200 million gallons of unused and expansion capacity that could be put into service immediately. In addition, 200 million gallons of new capacity is currently under construction around the country. On top of that there is about 300 million gallons of production in the financing and engineering stage. Those 300 million gallons will virtually be assured of coming on-line with the passage of this program, as it will reassure potential investors and financial institutions that the industry will have growth potential.

The EPA has estimated that 630 million gallons of ethanol may be needed to meet the proposed requirements. It is therefore obvious, with 1.3 billion gallons of current production, there will be no lack of supply. Some supply may be shifted from historic markets in the Midwest that are not under RFG regulatory requirements, but most of the supply will come from expanded or new production.

Some skeptics will say that ethanol is not a renewable resource since fossil fuels are used in its production. This reflects a poor understanding of the industry. The two most recent and comprehensive studies done by Oak Ridge National Lab and the Institute for Local Self Reliance, both have shown that even from small production facilities, there is significantly more energy in a gallon of ethanol than is required to produce it. When oil is pumped out of the ground and burned, a finite energy source is depleted. When ethanol is made, captured solar energy stored in plants is released. Ethanol is truly renewable, and the energy balance improves with each passing year.

This country deserves a brighter future than dependence on a limited and foreign energy supply and the debt and loss of jobs that brings. The renewable oxygenate proposal is a step in the right direction by recognizing the need to use products that contribute to the economy and the environment, while in true U.S. fashion, letting the market determine what role to play.

February 23, 1994

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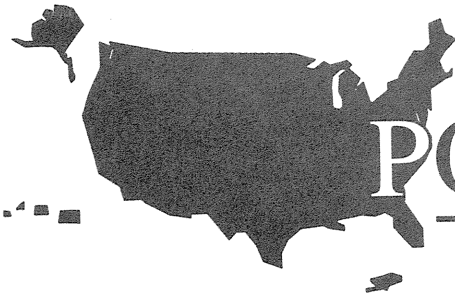

POLICY STATEMENT

Foreign Market Development Program

The Foreign Market Development Program (FMD), also known as the cooperator program, is administered by the USDA Foreign Agricultural Service (FAS). The goal of the FMD program is to develop, maintain and expand long-term export markets for U.S. agricultural products.

Created nearly 40 years ago, the program fosters trade promotion partnerships between USDA and U.S. agricultural producers who are represented by nonprofit commodity or trade associations called cooperators. Through these partnerships, USDA and the cooperators pool their technical and financial resources to conduct market development activities outside the United States.

Agricultural exports are important to the overall U.S. economy, generating economic activity, income and jobs. Each $1 billion in agricultural exports supports an estimated 22,000 U.S. jobs—jobs in production, processing, packaging, transportation, insurance and related industries. In fiscal year 1993, U.S. agricultural exports exceeded $42 billion, and the U.S. recorded its 34th straight surplus on agricultural trade—a surplus large enough to put agriculture in front of most other U.S. industry sectors in contributing to the nation's trade balance.

Although the FMD program plays a very positive role toward contributing to the national trade balance, the program has been reduced in the 1995 proposed budget by $10 million from $55.4 million in 1994 to $45.4 million for 1995, an 18 percent reduction.

NASDA strongly urges Congress to maintain funding for the Foreign Market Development Program at the full 1994 level of $55.4 million. A reduction at the level proposed would adversely affect the ability of American agriculture products to compete in foreign markets.

About 40 cooperators represent specific U.S. commodity sectors such as feed grains, wheat, soybeans, rice, tallow, dairy cattle, red meats, poultry, forest products, and others. The nonprofit cooperator organizations are funded by their members, including individual farmers and ranchers, specialized producers or breeders, farmer cooperatives, processors and handlers and various agricultural support industries. Other cooperators in the program include the National Association of State Departments of Agriculture and the four State Regional Trade Groups representing the agricultural interests of the eastern, western, southern and mid-American states.

The FMD program allows all segments of U.S. agriculture, including those associated with the small-volume export commodities, to participate in efforts to build export markets. Overseas promotions focus

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mainly on generic U.S. commodities, rather than individual brand-name products and are targeted toward long-term market development that may not always offer an immediate payoff.

By providing cost-sharing assistance and the opportunity to work closely with USDA's trade agency FAS, with its overseas offices, the FMD program has mobilized private sector support and funding for market development activities in more than 100 countries worldwide. By funding their own associations these groups show a willingness to invest their own money to support organized efforts to expand export markets for U.S. agricultural products.

The cooperator program directly benefits the U.S. farmers, ranchers, processors and exporters by assisting their organizations in developing new foreign markets and giving them the ability to compete for market share in existing markets.

For nearly 40 years the cooperator program has helped support growth in U.S. agricultural exports by enlisting private sector involvement and resources in coordinated efforts to promote U.S. products to foreign importers and consumers around the world. The continued strength of these exports in the face of intense global competition and widespread trade barriers is, in part, a reflection of the success of this public-private sector partnership in building a strong, sustained commitment to U.S. agricultural export development.

February 22, 1994

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POLICY STATEMENT

CONTINUED AVAILABILITY OF PESTICIDES FOR MINOR CROPS

The National Association of State Departments of Agriculture (NASDA) strongly supports the use of modern technology and farm management tools, including insecticides, fungicides and rodenticides (pesticides), as necessary to maintain, increase and protect crop production. Pesticides provide protection from a variety of pests such as insects, weeds, fungi, and rodents. NASDA believes that we must have these tools to insure a safe and stable food supply.

American farmers are the most productive in the world. One farmer feeds well over 100 people — a testament to the innovation, sound utilization of scientific technology, determination and hard work of farmers across the country.

Fruit, vegetables, nursery stock, horticultural and other crops — the so called "minor crops" — contribute over $30 billion to the farm level agricultural economy. Horticultural products are currently the nation's second leading export category, with over $7 billion exported during 1992. However, farmers who grow minor crops are in serious trouble due to the loss of critical crop production tools. The production, thus the availability of fruits, vegetables and other minor crops, is being adversely affected. Pesticide manufacturers have already dropped many minor crop uses for their products because of the high cost of developing supporting health and safety data for government approval. The high cost of reregistration has jeopardized the future of "low-volume" pesticides for new product replacements and non-chemical alternatives are few, if any.

Minor use is defined as the use of a pesticide on an animal, on a commercial crop or site, or for the protection of public health where the volume of use does not provide sufficient economic incentive to support the cost of initial registration or continuing registration of a pesticide for such use. The costs of research, development, and registration exceed the potential dollar value of the market. Minor use pesticides are endangered for economic, not safety reasons.

BACKGROUND

In 1947, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) was enacted. Since that time, over 50,000 pesticide products have been registered. A 1972 amendment to FIFRA required the Environmental Protection Agency (EPA) to evaluate registered pesticides, taking into account the long-term health and environmental effects. In 1988, FIFRA was again amended to accelerate the reregistration process, imposing strict time schedules for completion of all registrations and instituting fees for maintaining registration of products and reregistering active ingredients. The registration or reregistration of a pesticide with the EPA can involve more than 200 scientific data requirements. Because sales from minor use pesticides do not pay for the high cost of generating the data required by EPA, pesticide manufacturers are — for economic reasons — voluntarily (1) dropping smaller volume

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minor use products scheduled for registration under the compressed schedule of FIFRA 88; and (2) deferring registering new products or uses for minor crops.

The Interregional Research Project No.4 (IR-4) was organized in 1963 to obtain residue tolerances for minor use pesticides on food and feed crops where economic considerations precluded private sector registration. Since its inception, IR-4 has been administered by the Cooperative State Research Service at USDA. In 1976, the Agricultural Research Service established a companion minor use program to provide further support for the minor use effort. The program has been expanded to cover registrations of pesticides for protection of nursery and floral crops, forest seedlings and turf grass, biological pest control agents and animal health drugs for use on minor animal species.

IR-4 relies on commodity producers, state and federal research scientists and extension personnel to suggest pest control needs important to the agricultural community. These needs are evaluated by industry registrants and EPA and are prioritized for the purposes of research by regional and national committees of agricultural specialists. IR-4 has been responsible for a large number of safe and effective pesticides and biological alternatives for use on minor crops. This program offers the only non-industry route for data gathering and research on essential minor crop and animal products. NASDA supports the work of IR-4.

FINANCIAL IMPACT

In 1990, U.S. agricultural crop sales were valued at approximately $70 billion of which more than one-half was from the sales of "minor crops" such as vegetables, fruit, nuts, seeds and ornamentals.

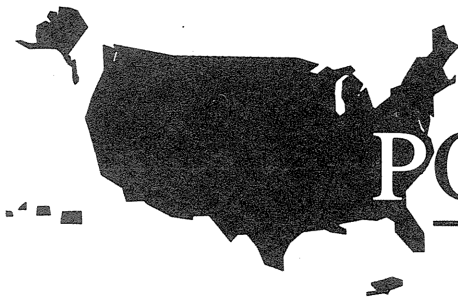
ALTERNATIVES

In many cases, no alternatives are available to current products due for reregistration. Biological alternatives have not been developed to a sufficient level to replace these chemical uses and maintain a stable food supply for the United States or for export markets. Inaction is not an acceptable alternative. If the availability of pesticides for minor crops is substantially curtailed, the economic impacts would be felt from farmer to consumer. Ultimately, the consumer could see less variety of fruits and vegetables, lower quality and higher prices in the market place.

NASDA POSITION

The National Association of State Departments of Agriculture fully advocates:

- Adequate federal appropriations and reallocation of existing funding for EPA and USDA to carry out existing programs, including any new initiatives.
- Creation of offices within USDA and EPA that deal solely with minor use issues, with close coordination between these offices.
- Expanded research into pest control alternatives and promotion of integrated pest management programs (IPM).
- Review of state management and regulatory programs to determine if they should be modified to help retain production of minor crops.
- Adequate federal funding for research into filling data gaps for minor crops through IR-4 type programs.
- Review and correction of IR-4 to ensure the program is operating in a timely and efficient fashion.
- Legislative changes that will permit and encourage agrichemical companies to provide the necessary production tools needed by minor crop farmers.
- Continued support of the work of the Minor Crop Farmer Alliance.



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POSITION STATEMENT

PESTICIDE REGULATION REFORM

NASDA POSITION

American consumers can be confident that the food supply is safe from unreasonable risks presented by pesticide residues. The food products available to U.S. consumers are safe, abundant and economical. The National Association of State Departments of Agriculture (NASDA) does believe, however, that improvements in our pesticide laws are needed primarily due to advances in scientific technological capabilities. As the national association of the state lead pesticide regulatory agencies, NASDA believes that certain changes will improve federal regulation of pesticide use and establish national uniform tolerances for residues in food based upon a "negligible risk" standard, as recommended by the National Academy of Sciences (NAS). NASDA believes availability of effective and safe pesticides is essential if farmers are to continue to produce a safe, affordable and adequate food supply and remain competitive in the world market. Several proposals for pesticide regulatory reform have been offered — S. 1478/H.R. 1627, the Food Quality Protection Act of 1993; S. 331/H.R. 872, the Pesticide Food Safety Act of 1993; and the administration's proposal.

NASDA strongly believes that S. 1478, introduced by Senators Pryor (D-AR) and Lugar (R-IN), and H.R. 1627, introduced Representatives Lehman (D-CA), Bliley (R-VA), and Rowland (D-GA), provide the best model for pesticide safety reform. These bills provide the most reasonable and comprehensive approach to legislative change. Moreover, S. 1478 contains specific provisions that would require the Environmental Protection Agency (EPA) to implement the recent recommendations of the NAS and to employ improved procedures to assure that pesticide tolerances adequately safeguard the health of infants and children. Adoption of S. 1478/H.R. 1627 will allow the U.S. to continue to produce the safest, most economical, and most abundant food supply in the world.

RIGID NEGLIGIBLE RISK STANDARD

NASDA is specifically concerned that a negligible risk standard not be defined by reference to a specific acceptable numerical risk level, either in statutory language or legislative history. It is essential that EPA maintain flexibility to take account of evolving scientific standards and to consider all relevant safety and exposure information. S. 1478/H.R. 1627 allows EPA to employ its expert judgement unhindered by a numerical straightjacket.

While the administration proposal and S. 331/H.R. 872 eliminate the Delaney Clause, they replace Delaney with a so-called bright-line standard which would prohibit EPA from setting a tolerance under any circumstances for a pesticide posing more than a one in one million lifetime cancer risk based on conservative risk assessment methods. This inflexible standard would unreasonably restrict EPA's expert judgement and would preclude consideration of advances in toxicological science and risk assessment.

LIMITATION OF BENEFITS

S. 1478/H.R. 1627 would make clear that EPA may establish a tolerance for a pesticide residue posing greater than a negligible risk if EPA determines that there are countervailing benefits. EPA would be directed to take into account health, nutritional and consumer benefits, including the impact of the loss of a pesticide on the availability of an adequate, wholesome and economical food supply. EPA would

be precluded from considering any impact on pesticide manufacturers or distributors. NASDA believes this language must be included in any pesticide reform legislation.

The administration proposal would greatly limit the types of benefits that could be considered in pesticide tolerance decisions, would prohibit the continuation of a tolerance based on exceptional benefits beyond 5 years, and would prohibit any consideration of benefits in tolerance decisions after ten years. The proposal would prohibit EPA from taking into account the value of a pesticide in maintaining an adequate, wholesome and economical food supply unless it could be proven that loss of the pesticide would cause a "significant disruption in the food supply" and would have a profound effect on consumer prices. NASDA strongly opposes this narrow benefits standard which would be virtually impossible to satisfy. Prohibition of consideration of benefits for pesticide tolerances would deprive growers of pesticides for which there are no alternatives, would undermine the nutritional welfare of consumers and would not achieve a meaningful risk reduction.

LIMITATION ON USE OF REALISTIC EXPOSURE DATA

NASDA supports the administration's stated goal of using the best available exposure information, including actual pesticide use and residue data, in setting pesticide tolerances. However, the written proposal would prohibit the use of actual exposure information (including pesticide use and residue data) and would require use of worse case assumptions unless the registrant could satisfy a heavy burden of proof. Tolerances based on actual exposure data would be subject to discretionary periodic reconsideration and a possible requirement for separate tolerances for raw commodities and processed food. NASDA believes these evidentiary and procedural hurdles would compel the use of exaggerated exposure assumptions and inflated risk estimates in virtually all tolerance determinations.

ACCELERATED TOLERANCE RENEWAL

The administration proposal would generally provide for renewal of pesticide tolerances over a seven year period in conjunction with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) reregistration. Special expedited renewal, over a three year period, would be required for pesticides identified by EPA as having a high risk potential. NASDA believes this accelerated review provision is impractical, would conflict with the FIFRA reregistration process and would give EPA excessive discretion to eliminate valuable food use pesticides without the procedural protections of the FIFRA cancellation process.

"PHASE-OUT/PHASE-DOWN" OF PESTICIDE REGISTRATIONS

NASDA believes it is unnecessary to give EPA entirely new authority to phase-out/phase-down the use of a pesticide where "credible scientific evidence shows a pesticide is reasonably likely to pose a significant risk to humans or the environment." NASDA believes such authority would encourage EPA to circumvent the FIFRA cancellation process. It would empower EPA to limit or prohibit the use of a pesticide without the external scientific review and procedural protections in the cancellation process, without any consideration of the pesticide's benefits and on the basis of toxicological evidence that is too weak, incomplete or inconsistent to support a complete risk analysis. Phase-out orders would generate damaging adverse publicity, disrupt sales of food products and cause irreparable harm to food producers and consumers. With the modification proposed to cancellation and suspension by S. 1478/H.R. 1627 and the administration proposal, this new vaguely defined concept is completely unnecessary.

CANCELLATION AND SUSPENSION

NASDA believes that statutory changes are necessary to permit EPA to remove hazardous pesticides from the market with reasonable speed. The administration proposal and S. 1478/H.R. 1627 would eliminate the adjudicatory hearing process for cancellation procedures, and suspension actions would be decoupled from cancellation procedures. Accordingly, we strongly support these provisions to streamline and speed-up the suspension and cancellation procedures. NASDA believes a provision should be included which would provide an expedited process to retrieve chemicals from the end-user (farmer) which have been cancelled or suspended.

REGISTRATION SUNSET

The administration proposal calls for reregistration of all products every 15 years. NASDA supports a 15 year sunset on registrations, but is concerned with the provisions as proposed by the administration. As proposed, a product could be forced off the market if EPA failed to act in a timely fashion even though all data requirements had been fulfilled. The language should be changed to indicate that if EPA fails to act, and all data requirements have been fulfilled, the registration should continue. This modification should be made applicable to the tolerance renewal provisions as well. Furthermore, EPA should be required to provide adequate lead time for the submission of any new data requirements.

TOLERANCE UNIFORMITY & FEDERAL PREEMPTION

A tolerance uniformity provision is indispensable to preserve EPA's leadership in pesticide regulation and to avoid the consumer confusion and unreasonable burdens on interstate commerce caused by special state tolerance requirements. NASDA strongly supports the uniformity provisions of S. 1478/H.R. 1627.

Pesticide use regulations are best enacted and coordinated at the state level or higher. In this way, conflicting and overlapping regulations may be avoided, and greater access to scientific expertise and input is available. With greater citizen input at the state level, action taken will benefit all residents of the state rather than one isolated town or village. NASDA supports sensible, uniform federal/state regulation of pesticides through passage of preemptive legislation, while allowing local input into the federal/state regulatory process.

FDA ENFORCEMENT AUTHORITY

FDA already possesses ample enforcement power with respect to food violations, including seizure, injunction and broad criminal penalty authority. NASDA does not believe there is a demonstrated need for FDA to have additional enforcement authority, such as recall, embargo and civil penalty authority for pesticide tolerance violations. This would give FDA excessive discretionary authority without protecting the due process rights of regulated parties. There is also no reason for FDA to have different enforcement authority for pesticide tolerance violations than for other food infractions.

PRIVATE RIGHT OF ACTION

NASDA strongly opposes the concept of citizen suits against EPA, state regulatory agencies and farmers for any violation of FIFRA. Such a provision is wholly unnecessary and only encourages frivolous lawsuits and disrupts agricultural production. There is no evidence that EPA is unable to adequately enforce FIFRA or that a private right of action provision would meaningfully enhance pesticide safety.

PESTICIDE RECORDKEEPING

NASDA strongly opposes expansion of the 1990 Farm Bill recordkeeping requirements to cover all farmers who apply any general use pesticides. Claims that such a requirement is necessary because USDA does not have sufficient data only points to the failure of data collection, not the failure of farmers to keep records.

As regulators of pesticide application and pesticide recordkeeping, NASDA's members believe such a provision would be absolutely impossible to enforce since those who apply general use pesticides — categorized as such because of their non-threatening environmental nature — do not have to, in any way, be identified.

REDUCED USE

The administration proposal calls for a joint EPA-USDA chaired effort to, within one year, develop commodity-specific pesticide use reduction goals. Under the proposal, the statute would clearly state a policy goal "favoring reduced use and direct federal agencies to take a leadership role in promoting use reduction and IPM [Integrated Pest Management] in their programs." The plan calls for implementation of IPM practices on 75 percent of all production land in seven years.

While NASDA believes that IPM programs need to be encouraged, the administration uses the terms "IPM," "reduced use," and "sustainable" interchangeably. IPM programs do not necessarily mean reduced use, but more efficient and effective use of crop protection chemicals. Any legislative goals must clearly define IPM and recognize the difference in the three terms.

NASDA supports the administration proposal calling for the elimination of the prohibition on requiring IPM training as part of the certification and training programs. NASDA also looks favorably on the concept of "prescription use" of certain pesticides in an IPM program only as an alternative to complete loss of the pesticide. Such authority allows the retention of pesticides which may otherwise be cancelled, and should not become yet another mechanism to reduce production tool options. This administration request for "prescription use" further points out the need to allow benefits consideration when registering pesticides.

MINOR USE

NASDA strongly supports the minor use provisions contained in S. 985 and H.R. 967, introduced by Senator Inouye (D-HI) and House Agriculture Committee Chairman de la Garza (D-TX), and believes this legislation will go a long way toward correcting the problem created inadvertently by the 1988 amendments to FIFRA which have led to the loss of necessary minor use crop protection chemicals. While the minor use issue is an economic one and not a food safety issue, it is extremely important to resolve the issue. The administration proposal includes aspects of the minor use provisions contained in S. 985/H.R. 967, but it is incomplete and lacks the specificity of S. 985/H.R. 967. NASDA, therefore, recommends that the language of S. 985/H.R. 967, amended by adding minor use health pesticide provisions, be used in place of the administration's proposal. If a comprehensive bill cannot be worked out, NASDA suggests that S. 985/H.R. 967 be passed as a stand-alone bill.

STREAMLINE LABEL CHANGES

NASDA believes the administration's proposal calling for an annual uniform labeling effective date allowing registrants to make label changes in a predictable, orderly fashion, would dramatically speed and simplify the process for making changes.

EXPORT OF PESTICIDES

The administration's original proposal would ban the export of any pesticide that has been cancelled in the U.S. based on health concerns. NASDA supports a ban on exports for any pesticide cancelled for health based reasons. Recently, however, the administration has expanded its proposal to prohibit the export of pesticides not registered in the U.S. or cancelled for environmental reasons. NASDA believes this broader prohibition is unnecessary and opposes such a provision. The U.S. does not allow food products to be shipped into the U.S. unless there is a food tolerance, eliminating concerns about non-registered products used in a foreign country and then imported to the U.S. It is further inappropriate for a developed country, such as the U.S., to mandate its environmental agenda on developing countries whose major production goal may well be feeding its people.

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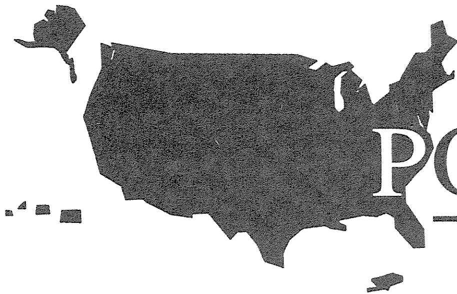

POSITION STATEMENT

WORKER PROTECTION STANDARD

BACKGROUND

The U.S. Environmental Protection Agency (EPA) has developed a comprehensive plan for implementing the new Worker Protection Standard (WPS) for agricultural pesticides. The final regulations, issued in August 1992, govern the protection of employees on farms, forests, nurseries, and greenhouses from occupational exposure to agricultural pesticides. The new Worker Protection Standard covers both workers in areas treated with pesticides, and employees who handle (mix, load, apply, etc.) pesticides for use in these areas.

As the national organization of the lead state pesticide regulatory agencies, the National Association of State Departments of Agriculture (NASDA) supports the underlying goals of the WPS — the protection of farmworkers. NASDA further believes that a strong education and information campaign is needed.

Part 156 of Title 40 CFR (Code of Federal Regulations) contains the requirements for labeling changes registrants must comply with to implement the WPS. In order to allow registrants to meet an April 21, 1994 deadline for label changes, EPA has issued complicated policy guidance containing several optional procedures. This policy, as delineated in EPA's supplemental PR Notice 93-11 issued August 13, 1993, will create uncertainty for state regulatory agencies and confusion among agricultural users of pesticides.

Part 170 of Title 40 CFR contains many of the details of the WPS which will not actually be printed on the label. Users must comply with the contents of Part 170 which will be incorporated by reference, into the pesticide labeling.

NASDA IMPLEMENTATION DATE POSITION

NASDA is seriously concerned with the unrealistic timeframe EPA has set for stages of the implementation process and many aspects of the Part 170 standards. EPA has been unable to answer a number of implementation questions posed by regulators and producers alike. The Agency is seriously behind schedule in preparing and distributing educational and training material, and number of the provisions cannot be implemented by producers as currently designed. These issues must be resolved before proper implementation can occur. In addition, the recent modification of labeling requirement implementation (discussed below) creates problems of confusion and adds to the difficulty users and regulators face in complying with and enforcing the standards.

Based on these problems, NASDA strongly suggests that EPA delay enforcement of the program until October 23, 1995. In the interim, we suggest that increased education and outreach programs occur in order to prepare the agricultural community for enforcement of the program.

NASDA UNRESOLVED ISSUES POSITION

With implementation of the WPS only days away, NASDA continues to stress its concerns over the regulation with the EPA. Some of the major problems with the program are described below.

Field and Greenhouse Posting Requirements & Oral Notification — The National Association of State Departments of Agriculture (NASDA) believes there are two central issues here, the first of which is the problem of having accurate information about the application in a timely way in order to be able to comply. Many fields are physically separated by great distances and the treatment of the fields is subject to the elements of weather. Because many pesticide labels have restrictions pertaining to windspeed and direction, the timing of the applications cannot be scheduled with any certainty and, therefore, field posting may not necessarily be in place in a timely manner. Further complicating this issue is the fact that specialty crops are frequently grown in small sets and parcels. This

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may result in several different postings and REIs in a small geographic area, thereby resulting in confusion for the employees, contractors and others working in the area.

The second issue relates to the question of who is responsible to see that the field posting is accomplished. Growers frequently utilize pest control advisors (PCAs) who deal directly with the custom applicator hired to make the applications. Since the PCA is responsible for coordinating the application, the opportunity for miscommunication is lessened if the PCA also posts signs. Growers believe they should be allowed to pass on the responsibility of posting to those parties that are directly involved with the pesticide recommendation and application.

Greenhouses have other unique problems with this portion of the WPS regulations. If a dermal toxicity category I product is applied to a single bed in a greenhouse, that greenhouse cannot have any activity performed in or around it unless the employee is in the required full personal protective equipment (PPE) and has been trained as a pesticide handler.

There are obvious differences between large corporations and family farms. Farmers do not employ full-time attorneys to interpret and develop regulatory compliance programs for them. Farmers do not employ risk control managers to implement and oversee compliance with regulatory mandates. The WPS does not recognize the differences that exist between large corporate farms with hundreds of workers and the many small farms that may only employ a few intermittent seasonal laborers.

The complexity of the rule puts farmers at great financial risk. The cost of compliance may be insignificant when compared to a much greater risk for tort liability resulting from technical violations of the rules which may not have caused any actual harm to a worker. This same complexity of the WPS creates a strong probability that every agricultural employer will, at some time be in violation, despite his best intentions to comply.

NASDA believes that specific treated area information should be kept and made available to employees at a centralized location, not posted at the field. This would satisfy the intent of making exposure treatment information available in the event medical attention is required without the extra burden of generating and posting information. Additionally, in the case of contract labor, field workers may work in several different fields for several different growers in a short period of time. Knowing exactly what was the source of chronic exposures will be difficult, and field site posting will not alleviate this issue.

From a regulatory position, it will be virtually impossible to enforce the oral notification provision for the simple reason there is no documentation of the fact that the warning was given. It will be one person's word against another. How can an employer anticipate which of his employees may wander within 1/4 mile of treated areas?

Equal Responsibility of Farmers and Contractors for Compliance — It is strongly felt that the grower must have the ability to transfer liability via contracts to highly trained professionals capable of maintaining their level of expertise. The new federal Standard would unfairly hold farmers liable for the activities of these contract professionals such as pest control advisors, farm labor contractors, commercial applicators and packing shed operators. It is becoming extremely difficult for any grower to stay abreast of the constantly changing myriad of regulations that they are subject to, much less oversee all the people with whom they contract.

Requirements for Crop Advisors — The definition of crop advisor in the WPS is far too encompassing. It includes not only pest control advisors but also any supervisor or foreman who might enter a field to check on the general condition of the crop. It is unreasonable to require a licensed PCA to carry all potential PPE that may be required by any label plus a decontamination facility to every field they might visit in any given day. Not only is the level of equipment inappropriate but it will severely limit the PCAs ability to perform his services.

It is common practice for a PCA to visit in excess of 50 fields per day in a geographic area that could be as large as 250 square miles or more. To impose oral notification on professional PCAs, and require them to return to a farmer's headquarters, which may be miles away, to obtain information on applications and REIs on all fields within 1/4 mile of any field they may enter is extremely burdensome and unnecessary.

Training Requirements for Handlers and Fieldworkers — NASDA supports the concept of training of both handlers and fieldworkers. We do not, however, believe the current system of verification is adequate. NASDA believes the system is prone to counterfeiting and has substantial problems associated with accurately identifying individuals. Sufficient time and resources (dollars) are not available to meet the overly ambitious implementation schedule.

Restricted Entry Interval — The prohibition of routine early reentry for short-term tasks with no hand labor for no more than one hour in a 24-hour period will impact several facets of agricultural production, including, but not limited to, the successful implementation of integrated pest management (IPM). In places where production of crops is entirely dependent upon irrigation, crop losses or yield reductions will result if irrigation timing is not strictly adhered to. Further complicating this problem is "project" or irrigation district water. When it is your turn to receive water, you must use it or wait until your time comes around again.

Pesticide applications and the irrigation of fields are two operations that frequently overlap. Some farmers also use irrigation to aid in pest control. If the furrows are full of water, certain pests will not be able to hide there; the irrigation water helps to obtain a better pest kill. When pesticide applications and irrigations cannot be properly coordinated, the result will be yield reductions due to insect pressure or lack of water. Increased insect pressures will require additional pesticide applications adding not only to production costs, but also increasing opportunities for occupational exposure and environmental hazards. If irrigations are delayed for three days because irrigators cannot enter the field, the entire field will be jeopardized from a cultural standpoint. Proper timing of irrigation water as well as fertilizer application is extremely important to bring the crop to its maximum potential yield while preserving quality.

Frost protection may be a similar issue (although it may fall under the federal WPS agricultural emergency exemption). Early reentry for lighting smudge pots, activating, monitoring or repairing fans etc. is required at times to protect crops. Lesser degrees of protective equipment may be utilized to perform these short term tasks which involve no direct contact with the treated plants.

As the REI standard exists now, as a regulatory agency charged with enforcing this provision NASDA believes this restriction is totally unenforceable. How can our field staff document the amount of time hundreds if not thousands of fieldworkers spend irrigating crops under an REI? In the case of a complaint from a worker, documentation for prosecution of an employer will be nearly impossible as it will be one person's word against another's.

There must be exemptions in the WPS for early entry into treated areas where workers will not come into significant contact with plant surfaces.

Personal Protective Equipment — Among the several new provisions covered by the WPS that will have a major impact on the agricultural community is the requirement to wear extreme personal protective equipment (PPE). While there are several problems with the PPE regulations, the central flaw in the regulations is that there are no distinctions made in clothing required for climate conditions in various parts of the country. For example, what might be acceptable clothing for pesticide handlers in the dry, High Plains of Montana in mid-summer where temperatures are cooler and humidity is very low would be deadly in Louisiana where daily temperatures during the summer are in excess of 95 degrees and the relative humidity is in excess of 90 percent every day. The combination of temperature and humidity in many southern states during summer months makes these PPE requirements completely unworkable.

There is also a lot of concern among agricultural producers as to their liability exposure when dealing with the problem of heat stress. The standard simply states that the employer take any necessary steps to prevent heat illness while PPE is being worn. What are the necessary steps? There are many factors that have to be taken into account, such as weather, work-load, protective gear to be worn, and the physical condition of the worker. If the employer misjudges one of these subjective factors and this results in employee heat stress, the employer could then be faced with the burden of liability. High air temperature and humidities put agricultural workers at special risk of heat illness. Workers' Compensation claims for heat illness among agricultural workers are among the highest of any occupation. With the additional requirements of the WPS, these claims will surely significantly increase in number.

Federal Funding of the WPS — There are several areas of concern among the state regulatory officials that are charged with implementation of the WPS program. One of the biggest concerns is money. This program on its own will require as much training and compliance monitoring as the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Without proper funding, the state lead agencies will not be able to provide the necessary training or the necessary compliance inspections in order to make the program work. This will lead to a tremendous amount of confusion and frustration that will result in apathy and non-compliance and ultimately the failure of the program. While EPA has drafted rules and implementation plans for major changes in the program to improve protection of farmers and their employees from pesticide exposure, the desired end point of this program is not likely to be met because funding to support state pesticide lead agencies and extension services, is totally inadequate.

Training and Education — At the present time, most of the training material that was to be provided to the states by EPA has not yet been received. And the state lead agencies and university extension services, charged with the education and compliance assistance components of the implementation process, are receiving from federal agencies only a small portion of the funding needed to adequately prepare the training materials and to disseminate the information to farmers, workers and handlers on a timely basis. The states have been told that the material will be provided in the near future. Most of the material was due by April 21, 1993. Even with the most expedited efforts, it is impossible to have everyone trained by April 15, 1994.

Labels — The pesticide label statements are the basic enforcement component of assuring protection to persons who handle these materials or may be exposed to their residues on treated surfaces. NASDA supports the EPA's diligent efforts to improve pesticide labels and provide increased protection to workers and handlers. However, NASDA has concerns that EPA has, through its ambitious efforts to change labels for increased protection, uniformity in interpretation, and predictable enforcement, established a program that will have contrary effects.

If a registrant elects to choose what has been called a "self-verification" option, the state lead agencies will have substantial difficulty in determining whether it is in compliance. There is no mechanism or system for the states to know whether the products observed in the field have been self-verified or whether they even meet the WPS labeling requirements. Changes to labels could be directly or inadvertently made outside the scope of the WPS. These types of violative products may take a considerable amount of enforcement resources to determine these eventual problems, all the while possibly increasing the chances of worker exposures which are unacceptable and even consumer exposures to potential illegal residues on food crops.

Also, noncomplying products that are released for shipment before January 1, 1994, may be sold or distributed after the cutoff date under certain conditions. State lead agencies responsible for enforcing the new labels may not be aware of the actual shipping date without dedicating a significant amount of resources to tracking bills of lading, shipping invoices, and inventory receipts. In fact, the shipment could be in another state and access to the information would be limited. Under this option, registrants would be required to make "generic" labels available to retailers and distributors that purchase these noncomplying products. These businesses would make them available to users at the time of purchase. There is no enforcement safety net or mechanism to assure the businesses distribute the generic labels or whether the purchaser keeps it. Enforcement staff would be required to conduct an extreme amount of follow-up work to determine a paperwork trail of compliance. Furthermore, applicators would have no incentive to retain the generic label if it was included with the product and would instead follow the container label, which may have reduced worker protection statements. This, in effect, would not reduce potential exposure to workers and handlers. Without the generic label at the site, regulatory officials will have difficulty in determining whether it was provided.

In addition to the generic label, a registrant may opt for what is called "interim" labeling. This essentially requires a sticker on the container label that refers the user to a product-specific label. The sticker would, for all practical purposes, tell the user to ignore the container statements and comply with the interim label directions. As you can predict, the same type of enforcement problems will occur under this scenario as with the generic labels. To complicate this matter further, a registrant may elect different options for the same product depending upon stock inventories and shipment dates. In essence, a retailer/distributor or user could end up with the same product, but different type of labeling. This certainly complicates the enforceability of the labeling scheme.

There are legitimate concerns that while attempting to determine which label statement to follow, the applicator could inadvertently choose the wrong one and be in violation. This type of labeling circumstance establishes a very arbitrary and confusing decision for the applicator as well as the enforcement staff attempting to determine compliance. Indeed, it is possible that a pesticide applicator could have an old label, a generic label, and a stickered interim label all at one site. Imagine our difficulty in determining compliance with this scenario! Put yourself in this situation as a user and you can see the problem of attempting to decide what label direction to follow.

Under EPA guidelines, registrants may receive preapproved deviations, exclusions, or time extensions from the WPS labeling requirements. Again, regulatory officials will not know if, or when, these modifications were approved by the federal agency. Product status will be questionable at best. Field staff may be reluctant to take enforcement actions due to this type of tenuous situation and users would be more inclined to stockpile and use old labels that do not provide the intended protection, thus negating our mutual objective of reducing occupational exposure to pesticides.