



PPC

PESTICIDE POLICY COALITION
A Coalition Working for Sound Pest Management Policies

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Gina McCarthy, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

**RE: Pesticides; Certification of Pesticide Applicators. Proposed Rule. 80 FR 51355.
August 24, 2015. Docket ID: EPA-HQ-OPP-2011-0183**

Dear Administrator McCarthy:

The Pesticide Policy Coalition (“PPC” or the “Coalition”) appreciates the opportunity to comment on the Environmental Protection Agency’s (EPA’s or the Agency’s) proposed revisions to regulations at 40 CFR Part 171 for certification and training of applicators of restricted-use pesticides (RUPs). PPC is an organization that represents food, agriculture, forestry, pest management and related organizations that support transparent, fair and science-based regulation of pest management. PPC members include: nationwide and regional farm, commodity, specialty crop, and silviculture organizations; cooperatives; food processors and marketers; pesticide manufacturers, formulators and distributors; pest- and vector-control operators and applicators; research organizations; and other interested parties. PPC serves as a forum for the review, discussion, development and advocacy of pest management policies and issues important to its members.

COMMENTS

EPA’s obligation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) is to register pesticides that can be used without unreasonable adverse effects to human health or the environment. To ensure that necessary risk mitigation measures identified in FIFRA labeling for RUPs are known and expressly followed, EPA regulations establish that RUPs may be applied only by applicators that are certified or by noncertified applicators working under the direct supervision of a certified applicator. State lead agencies for pesticide regulation administer the training, testing, certification and enforcement programs that ensure competency of applicators that use RUPs, and protect the applicator, persons working under the direct supervision of the applicator, the general public, and the environment. EPA must approve these various state certification and training programs. EPA has concluded existing programs are outdated and vary widely from state to state; the proposed rule would establish uniform nationwide state standards for updated applicator training and competency testing. To comply, states, federal agencies and others would have to alter their certification programs, testing and enforcement, and the data they report to EPA. The PPC is concerned that the proposed changes contain many unworkable

provisions and will impose costly, unnecessary burdens on pesticide applicators and state agencies. In these comments we raise general concerns held by PPC members about a number of facets of the proposed rule.

Three-Year Frequency for Demonstrating Competency: In the proposed rule, EPA concludes that practicing pesticide applicators, whether private or commercial, typically forget most of their skills and career-gained knowledge in less than three years – regardless of years of experience and routine involvement in existing state certification programs. Furthermore, the agency concludes existing state certification plans utilizing four- or five-year cycles are ineffective, and would require states utilizing such cycles to immediately undertake the legislative and regulatory revisions to implement an EPA-approved three-year cycle. There are many aspects of these requirements that we oppose, several of which we comment on further in this document. In general, however, we believe the agency conclusions on which these aspects of the proposed rule are based demean the competency of skilled professional and private applicators, as well as current state pesticide programs. The three-year frequency and training/testing requirements would impose unwarranted time and cost burdens on applicators seeking to retain certification. The agency apparently also disregards the political and fiscal burdens the proposed rule would impose on state pesticide agencies for necessary legislative and regulatory changes; training and testing programs and software; enforcement; etc.

Commercial Applicator Requirement for Earning Continuing Education Units (CEUs): Every three years, EPA would require certified commercial applicators to either attend an extensive training program or pass a closed-book, proctored written exam to retain their certification. Commercial applicators, regardless of experience, would be required to attend training courses to earn six CEUs (300 minutes) of “core content” training, plus six CEUs for each “category of certification” (e.g., agriculture, forestry, aquatic pest control, human health disease vector control, etc.) they wish to maintain (or pass written, proctored exams in core and category-specific competency). If they are pilots engaged in aerial pest control, or fumigant applicators (EPA’s so-called “high risk” application-specific methods), they would also be required to attend additional training programs. EPA also proposes to require that the applicator earn a minimum of one-half of the required CEUs during the 18 month period preceding the expiration date of his or her certification.

The PPC has many concerns with this requirement:

- (a) The Agency has not justified the number of CEUs required for recertification in each category. The “6 CEUs” and “fifty minutes” per CEU of active training basis appear to be arbitrary. One category might require more, another might require less. EPA uses a CEU of 50 minutes and hours of training indiscriminately, which can lead to confusion. While 6 hours equals 360 minutes, six CEUs would require 300 minutes of training – a full hour’s difference.
- (b) EPA has not estimated expenses and burden for travel to obtain training or take exams.
- (c) EPA has not estimated the cost of class fees and the value of time away from the job to attend classes or testing sessions.
- (d) The Agency has not discussed reducing the burden by eliminating duplication among training and test requirements for each category.

- (e) The financial and time burdens of this proposal could be career-limiting for commercial RUP applicators that routinely service clients with widely varying pest control needs. For example, an experienced commercial aerial applicator certified in pest control for agricultural, forestry, aquatic and mosquito-control clients would be required to obtain 36 CEUs (~30 hours of coursework) or take six separate tests to recertify his or her competency as a trained and FAA-licensed aerial applicator;
- (f) EPA requirement that at least 50% of CEUs be earned in the 18 months preceding expiration of an applicator's certification suggests that applicators have the ability to only retain competency for 18 months – not 3 years, or 4 or 5 years. We dispute this assumption, and believe such a rigid requirement would make scheduling inconvenient and pose unwarranted burdens on applicators. EPA should allow applicators to obtain the required CEUs at any time during the recertification interval.
- (g) EPA has not considered the legislative, regulatory and economic burden for state agencies that imposing a mandatory CEU program would entail.

We are concerned that the excessive training requirements for recertification will adversely affect small businesses' work schedules and revenues, and incentivize applicators to opt for testing instead of training classes. EPA should consider reducing the number of CEUs required for both private and commercial applicators by consolidating or streamlining the required CEUs. EPA also should eliminate the fifty minute basis for each CEU, and instead base the time on the subject matter of the CEU. Alternatively, EPA should consider accepting current states' requirements for recertification of their RUP applicators.

Private Applicator Competency Requirements: As for commercial applicators, the proposed rule would require private applicators to demonstrate “core” competency, “categorical-use” competency (likely only agriculture), and additional “high-risk” application method competency if recertification is sought for private aerial application, soil fumigation, or non-soil fumigation (e.g., for predator pest control with sodium acetate or sodium cyanide). Use of RUP pesticides by private applicators occurs less frequently than it does for commercial applicators, but we believe private applicator training and competency certification is adequately met by current standards. Thus the risk potential of RUP exposure to private applicators and the environment is limited. The proposed rule would impose an additional burden on states to revise their programs to incorporate provisions for CEUs and proctored testing for private-applicator recertification. We do not believe the record supports the judgment that these additional regulatory burdens are offset by demonstrable benefits. Furthermore, the extensive CEU requirements proposed by the agency are likely to be a strong disincentive for private applicators to undertake time-consuming training and technical updates – undermining the intent of the rulemaking.

Minimum Age: The proposed rule would establish a minimum age of 18 years for all RUP applicators, with no exception for private applicators. We believe this is an area that would be most appropriately left to the states, some of which (as noted by EPA) already have acted to establish minimum ages that range up to 18 both for private and commercial applicators. Should EPA settle on a minimum age of 18 for certified RUP applicators, we would encourage EPA in any event to respect existing state RUP certification programs and include a grandfather clause to allow currently certified private and commercial applicators to retain their certification after any Federal minimum age requirement becomes effective. We recognize that state pesticide

programs vary relative to minimum-age requirements for applicators, and assume that EPA's intent to standardize this policy is likely to require many states to face the political and financial expense associated with efforts to change their current laws or regulations.

Impact on General Use Pesticide Applicators: EPA's proposed rule likely would impact not only RUP programs, but most state general-use pesticide (GUP) programs as well, creating additional unacknowledged burdens on the states and pesticide applicators alike. States indicate it is cost-prohibitive to administer applicator training and certification programs separately for RUPs and GUPs. Thus, the PPC believes the proposed rule requirements represent an unfunded mandate that would adversely affect all state pesticide programs and the commercial and private applicators they would regulate – increasing compliance burdens and fees for applicators of GUPs as well as RUPs. The economic analysis provided in the proposed rule does not account for impacts on state GUP programs or the many small businesses engaged in pesticide application. State regulators with limited resources likely will pass on the costs of the proposed rule by raising training and certification fees and/or limiting programs, affecting both commercial and private applicators. EPA must review its economic analysis to consider effects on GUP programs and small businesses engaged in pesticide application, and apply these considerations to revisions of the proposed rule.

Definition of "Use": The new definition for *'Use, as in "to use a pesticide"'* is overly broad and creates confusion. The plain reading of this definition could be interpreted to extend training requirements to a large number of employees engaged in office secretarial work, pesticide sales, equipment maintenance, and a host of other roles not directly engaged in activities taken to implement RUP product label directions for use. While "use" has been defined previously in other rules (e.g., 40 CFR 170: Worker Protection Standard), it has not been defined previously in regulations for RUP applicator certification and training. EPA should change the definition to clearly state that "use" only refers to activities identified in existing label language under directions for use. As part of this clarification, we urge EPA to remove the provision "and preparing a site for application (i.e. digging a trench)" and "arranging for the application of pesticides." The written definition should specifically exclude all activities that cannot or do not lead to direct exposure to the pesticide product itself, pesticide containers, or pesticide residues, such as, but not limited to, clerical, scheduling, administrative and communications tasks involved in arranging for the application of the pesticide; sales of pesticide products; and distributing copies of labels or training materials to others.

Definition of "Mishap": Also problematic is the rule's proposed definition of *"mishap"* as *"an event that may adversely affect man or the environment and that is related to the use or presence of a pesticide, whether the event was unexpected or intentional."* This definition differs from a similar definition for *"accident"* in the current version of 40 CFR 171 (omitted in the proposed rule), which is *"an unexpected, undesirable event, caused by the use or presence of a pesticide that adversely affects man or the environment."* The definition of *"accident"* specifies that an adverse effect has occurred, while the proposed definition of *"mishap"* only describes *"an event that may adversely affect"* ... The current definition of *"accident"* in 40 CFR §171.2(a)(1) should be retained, along with its use in the rule, and the new definition for *"mishap"* should be excluded.

“High Risk” Methods of Application: PPC members represent many minor-use categories of pest control, as well as commercial aerial applicators. We disagree that these job duties constitute a “high risk” when conducted by experienced professionals, and urge the agency to select a less pejorative term – such as “highly skilled” methods of application. We agree that such application methods require additional training for proper RUP use, but such industries already are well familiar with the training and routine best management practices (BMPs) associated with RUP use. It should be sufficient to state that *“The skills and hence the training required must be commensurate with the nature of the products to be applied and application methods involved.”*

For example, aerial application is a mature, expert industry that focuses on precision application and safety. U.S. aerial applicators invest a great deal in advanced aircraft and pesticide application technology, and in ongoing education and safety training, independent of that required by 40 CFR Part 170. The average pilot is 50 years old, with nearly 25 years of experience and 10,000 hours of aerial application. Mistakes are rare, as are pesticide exposure incidents. Industry BMPs include:

- safety training programs for pilots and ground workers;
- routine evaluation of aircraft setup;
- careful pre-flight evaluation and checks of aircraft systems;
- specific job planning considerations;
- modern on-board computerized systems; and
- proven in-flight adjustments to respond to meteorological and site conditions on farms, forests, ranches and other treatment areas.

Safety considerations include preflight discussion with each customer about —

- the job-site (field or forest) characteristics;
- proximity to any sensitive areas;
- field boundaries and buffers;
- product use considerations; and
- weather conditions expected, including temperature, relative humidity, wind speed wind direction, possibility of temperature inversion, and evaporative conditions.

The PPC appreciates the opportunity to provide these comments. We hope EPA will carefully consider our comments and recommendations. We look forward to communicating further with EPA as a final rule is developed.

Sincerely,



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