



OPP Docket: EPA-HQ-OPP-2011-0183
Environmental Protection Agency Docket Center
Mail Code 28221T
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

Re: EPA-HQ-OPP-2011-0183
Certification of Pesticide Applicators Rule Revision (40 CFR 171)

The Association of Structural Pest Control Regulatory Officials (ASPCRO) is a professional association of the structural pest control regulatory officials representing the fifty states. ASPCRO's goal is to protect the health and welfare of the citizens of each state through the fair and effective regulation of the pest control industry, including registrants and manufacturers of pesticides, which is vital in the control of pests of public health and economic significance.

In the development of comments, ASPCRO did consider the information collected in the joint survey of states conducted by the Association of American Pesticide Control Officials (AAPCO), ASPCRO and the State FIFRA Issues Research and Evaluation Group (SFIREG) (Summary Data in Appendix A). While ASPCRO does represent its member states, the results of the survey and individual state comments should be reviewed and considered with the same due diligence as ASPCRO's Board of Directors and Ad Hoc Workgroup comments. Also, ASPCRO is focusing its comments on those items it feels are most pressing in the regulation of commercial pesticide applicators making structural pesticide application. We however offer that in some areas, our comments apply to all categories of certified applicators

The certification of pesticide applicators ensures individuals who apply pesticides are competent to make informed decisions thereby reducing the chance for misapplication and potential threats to the health, safety, and welfare of citizens. ASPCRO supports the overarching goal of enhancing applicator competencies and providing more uniform competency among certified applicators nationally, however, we do believe there are some areas of the rule for which additional considerations should be made by the EPA prior to finalizing the rule:

1. Regulation of Restricted Use Products (RUPs)- While the statutory authority of the Federal Insecticide, Fungicide and Rodenticide Act is limited to the regulation of restricted use products (RUPs) most states, do not differentiate between RUPs and general use pesticides (GUPs) for commercial applications. Given the cost of running dual programs, the proposed requirements of this rule will likely be applied to both private applicators, who are required to be certified to apply RUPs and commercial applicators which can apply both GUPs and RUPs. According to the aforementioned joint survey, approximately 64% of respondents indicated implementation of the proposal would require amending their statutes and/or regulations. The majority of respondents

indicated that that the promulgation of laws and regulations would be the most challenging issue with implementation of the federal rule and that their respective states would be very resistant to change. In addition, opening state statutes and regulations leaves all states vulnerable to the potential for other changes to be introduced that could affect the integrity and effectiveness of current pesticide programs. Both Texas and Arizona experienced the dissolution of their structural pest control regulatory programs which were subsequently absorbed into other Agencies in similar situations. EPA is urged to consider that since the implementation of the current in 1947, and later amended in 1972, state certification and training programs have evolved substantially and independently of other states. ASPCRO believes that the large number of changes proposed may have unintended consequences. EPA is urged to consider the current effectiveness of individual state programs and provide flexibility and latitude throughout the rule to allow for demonstration of the equivalency of current program components in meeting the requirements.

2. Continuing Education Units (CEUs) – The proposal includes 6 hours Core and 6 hours per category for commercial applicators over a three year certification (renewal) cycle with 50% of the CEUs being required to be completed in the second half (18 months) of the cycle.
 - a. While we support the concept of enhanced competencies, the current proposal which specifies the number of continuing education units (CEU) an applicator is required to complete during the certification cycle fails to take into account states current certification and training program to ensure applicator competency. EPA should instead consider the equivalency of current state certification programs to ensure minimum applicator competencies through the established review and approval process for State Certification Plans. A similar process was undertaken with implementation of the federal Container Containment Rule.
 - b. Assuming the proposal is implemented as is,
 - i. The proposal does not include a provision for programs whose recertification period is currently less than three years and how those hours, including the requirement for 50% in the last half, would be prorated. ASPCRO requests that if the proposal is implemented as is, that it include a provision for states with a recertification period of less than three years and address both the number of CEUs required per year and the requirement for 50% to be taken in the last half.
 - ii. The proposal is not clear if the CEU requirement pertains to the designated federal categories only or if the CEU requirement would apply to subcategories designated by the State. For example, for the federal Category 7-Industrial, institutional, structural and health related pest control, if the State designated subcategories include General Pest; Wood Destroying Pest; and Vertebrate Pest, does the six hours per category refer to each of those state designated subcategories (in this example, six hours would be required for each of the three State designated subcategories) or across the entire designated federal categories (2 hours would be required for each of the State designated categories)? ASPCRO requests that the CEU requirement pertain only to the federal categories and not any

additional state designated subcategories. ASPCRO also requests that should the CEU requirement also apply to any state designated subcategory, the rule specify the number of CEUs per state designated subcategory. Some categories, for example, Aquatic pest control, are such that States or providers would be hard pressed to find enough resource material to fill the currently proposed CEU requirement of 6 hours/per category in addition to 6 hours for Core. In addition, whether or not the market can support the increased number of courses that would be required to meet the number of CEUs is unknown. ASPCRO requests that each federal pest control category be assigned a specific number of CEUs based on the type of pest to be controlled.

- iii. The proposal requires that a minimum of 50% of the CEUs be completed in the second half of the certification cycle. There is no data to support the benefits of this action nor does it consider the availability, or lack thereof of training opportunities in a given State. ASPCRO requests that the requirement be deleted such that the required CEUs can be completed at any time during the certification cycle.
3. Verification of Identification – The current proposal includes a requirement for States to ensure that test or training administrators verify the identity of persons seeking initial applicator certification and recertification. ASPCRO recognizes the need to maintain the integrity of certification and recertification programs and many states have implemented processes to verify the candidate’s identification. ASPCRO is concerned, however, about the ability of the State to enforce this requirement when testing or training is online or when recertification training is provided in person by a third party. If verification of identifications was not completed, for example, at a recertification course, would the attendees at the recertification training not receive credit for the training? In some states, this could be hundreds of attendees at a meeting. ASPCRO requests the EPA provide guidance on what constitutes that the candidate’s identification has been “verified” and appropriate enforcement actions for non-compliance
4. Pest Control and Method Specific Categories – As proposed, the rule would require applicators to be certified in the Pest Control Category and the Method Specific Category to conduct Non-soil Fumigation; Soil Fumigation; and Aerial applications. The proposal should include an equivalency provision that would allow a State to demonstrate if a current category meets the pest control and method specific requirements rather than requiring two separate categories. If implemented as written, ASPCRO recommends that commercial applicators currently certified to conduct these types of pesticide applications be grandfathered in and that the dual category certification be implemented for future applicators.
5. Definition of Use – The rule proposes to define “use” and includes activities not directly related to the application of the pesticide. The propose rule defines use as:

*“Use, as in “to use a pesticide” means any of the following:
(1) Pre-application activities, including, but not limited to:*

- (i) Arranging for the application of the pesticide.*
- (ii) Mixing and loading the pesticide.*
- (iii) Making necessary preparations for the application of the pesticide, including, but not limited to, responsibilities related to providing training, a copy of a label and use specific instructions to noncertified applicators, and complying with any applicable requirements under 40 CFR part 170.*
- (2) Applying the pesticide, including, but not limited to, supervising the use of a pesticide by a noncertified applicator.*
- (3) Post-application activities, including, but not limited to, transporting or storing pesticide containers that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticides*

By including activities not related to the actual use of the product, the proposed definition greatly expands the number of individuals covered by the rule. In most States, the “end user” is responsible for the proper use of the pesticide. Some of the activities in the proposed definition, for example, arranging for the application of the pesticide, may not be conducted by the end user and may be unenforceable by the State. ASCPRO suggests revising the definition to only include those broad activities directly related to the application of the pesticide including the application or direct handling (i.e. mixing, loading, dispersing and disposing) of pesticides.

6. Reciprocity – While supporting the concept of more closely aligning standards/requirements between States, especially for commercial businesses which often operate in more than one state, ASCPRO believes that any decision regarding offering reciprocity should be left to the States. States have specific pest issues and also have specific laws and regulations that cannot be addressed through reciprocity without additional testing/training. Should states in any way be required to offer reciprocity, this would result in additional financial burden to the State and potentially impinge on the state’s rights.
7. Uniform Certification Credentials – Information regarding an applicators certification should be available, however, need not be contained on the actual credential. The decision on what to include on the credential should be left to the States.
8. Minimum Age – We support the minimum age requirement of 18 to apply RUPs.
9. Non-certified commercial applicator competence – We support the concept of enhanced competency for non-certified applicators, however, implementation of a training program including recordkeeping would be difficult, for example, if the applicator is not required to be certified, how do we know who they are to ensure compliance? ASCPRO believes this can be accomplished however the proposal must provide flexibility to states in implementation. Any training requirement should also require that the training be conducted by a certified commercial applicator and have a minimum training period of three years as currently proposed for the certification cycle or whatever certification period is required in the final rule.

10. Pollinator Protection – ASPCRO strongly opposes the inclusion of any specific priority area, for example, pollinator protection, as part of any measure of competency for any category of pesticide applicators. National priority areas such as pollinator protection, School IPM, etc. are appropriately addressed through the Cooperative Grant Guidance and are reflected in the required and pick list items. Competencies should focus on the knowledge skills and abilities needed to apply a pesticide in a manner consistent with its label.
11. Program Reporting and Accountability – ASPCRO strongly objects to section 171.303(c)(1)(x) which stipulates states will be required to submit, as part of their annual reporting, *“a narrative summary and causal analysis of any misuse incidents or enforcement actions related to use of restricted use pesticides during the last 12 month reporting period. The summary should include the pesticide name and registration number, use or site involved, nature of violation, any adverse effects, most recent date of the certified applicator’s certification or recertification and, if applicable, the date of qualification of any non-certified applicator using restricted use pesticides under the direct supervision of the certified applicator. This summary should include a discussion of potential changes in policy or procedure to prevent future incidents or violations.”*

This proposed requirement is redundant with data already required to be reported to EPA’s Office of Enforcement and Compliance Assurance, and the recently revised Enforcement Performance Measures (see the 2015-2017 Cooperative Agreement Guidance, Section VII (Reporting and Enforcement Measures). The Cooperative Agreement Guidance was revised such that all states would use a national, standardized template to establish mutually agreeable objectives and reporting criteria. The purpose of the template was to provide consistency in data collection and reporting between EPA Regions and reduce the administrative burden to both states and EPA. It is counterintuitive to report the same data twice to EPA and to return to any requirement for a narrative. ASPCRO encourages EPA’s Office of Pesticide Programs to work with EPA’s Office of Enforcement and Compliance Assurance to establish a mechanism by which EPA can share the data states already report.

ASPCRO would like to thank EPA for the opportunity to comment on the Proposed Certification of Pesticide Applicator Rule Revisions. ASPCRO has a long history of promoting training, continuing education and the safe handling of pesticides to minimize any potential harm to human health and the environment while providing for the effective control of pests that adversely affect structures and the health of the public. As always, ASPCRO offers its assistance to EPA throughout the rule making process.