



DOCKET NUMBER: EPA-HQ-OPP-2011-0183 Pesticides; Certification of Pesticide Applicators
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209 Special Services Building, University Park, PA 16802
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SUBJECT: Formal Comments on Proposed Rule; Pesticide Applicator Certification

The American Association of Pesticide Safety Educators (AAPSE) membership is submitting the following comments regarding the proposed changes to the regulations pertaining to the Certification of Pesticide Applicators, 40 CFR Part 171, by the U.S. Environmental Protection Agency (EPA). AAPSE is a national organization that represents the following groups of individuals:

- Extension educators at land-grant universities and colleges,
- States, territories and tribes responsible for pesticide applicator certification and training,
- Federal agencies including EPA, and
- Individuals interested in advancing the cause of pesticide education, including industry and those actively participating in legislatively mandated pesticide education programs.

The primary focus of AAPSE members is to enhance public health and the environment through involvement in education, outreach, and research that directly benefits pest managers, pesticide applicators, policy makers, and the public. Based on conservative estimates, AAPSE members train and certify 500,000 applicators annually—both certified and non-certified—and not only those who work in agriculture, but also individuals who apply pesticides to urban landscapes, parks, forests, rights of ways, watersheds, buildings and structures, and for public health.

In addition, conservative estimates say that AAPSE members annually reach an additional 2 million individuals who apply pesticides other than those who fall under the current EPA pesticide regulations including, but not limited to: farm laborers, Master Gardeners, other non-certified applicators, and consumers. This level of education is already being accomplished with minimal funding from EPA, with the majority of funding from state and university programs—often by sources generated internally by pesticide safety education programs.

The AAPSE membership applauds the EPA's efforts to standardize and raise the educational competencies, training requirements, age limitations for applicators, and concepts for the education of non-certified applicators. In theory, the stricter standards proposed by these changes to the current rule will provide increased education, personal protection, and competency of those who apply Restricted-Use Pesticides (RUPs). AAPSE realizes that these proposed changes only apply to those applicators and individuals applying RUP's under the certified applicators direct supervision. However, many states have chosen to exceed the federal requirements and regulate those individuals who apply pesticides other than RUPs. The regulatory framework for these programs follows the guidelines set by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and as a result we feel these proposed changes will have a much greater impact on these states' educational and regulatory programs than EPA anticipates.

The practical real world implementation of the changes as proposed will mean significant costs for agricultural producers, pesticide applicators, pesticide application businesses, other small businesses, and consumers who apply pesticides or contract for services involving the use of pesticides. In addition, these changes as proposed will have significant impacts on many programs by imposing substantial costs, increased workloads, regulatory and/or legislative changes, and other burdens on state regulatory officials and educators who are already stretched beyond their capacities to meet EPA's current pesticide regulatory requirements.

The comments reflected in this document represent the general consensus of the members of the American Association of Pesticide Safety Applicator. Although it is not possible for one hundred percent concurrence between all members, these comments were formulated based on input and comments of the general overall membership and with the limited time available when possible input was gathered to represent the best interest of the stakeholders that AAPSE members serve. Most of the AAPSE membership feels that applicators will simply opt to retest in order to avoid the increased time commitments and associated costs of the proposed additional training requirements. The membership also feels this process will not provide the necessary opportunities for applicators to receive the needed information about new pesticides, regulatory changes, application technologies, and safety information in a timely manner. If this retesting scenario would be the course applicators choose for maintain their certification, it will significantly increase the workload of both the educational programs to develop new examinations and the regulatory agencies in administering examinations.

Another area of concern to AAPSE is that in the preamble to the proposed rule, EPA refers to the reliance on the Certification Training Assessment Group (CTAG) several times as the basis for the proposed regulatory changes. As a member of the CTAG board from 2005 – 2007, I have reviewed the information I have from participating in those meetings. Notes from the discussions held by CTAG in 2007 indicated that consideration of limiting the number of required recertification training credits that had to be accumulated by an applicator in a specific calendar year to renew their certification yielded a decision of no consensus by the group. As a result, CTAG dropped this issue from further consideration. Similarly, no action was taken by CTAG regarding the recommendation of a uniform recertification cycle of three years. Once again, I can find no record in my notes, or in the CTAG minutes of those meetings, where the standardization for the number of continuing education credits needed to renew a certificate or the length of time assigned per credit was discussed.

Furthermore, EPA also indicates they relied on the feedback they obtained from the Pesticide Program Dialog Committee (PPDC) and from individuals attending one of the Pesticide Regulatory Education Program (PREP) workshops for providing guidance to the Agency in developing the proposed rule. However, according to my AAPSE colleagues that participated in these meetings, expanding the training requirements and limiting the training options was not a topic of discussion at any of these meetings.

One of the most specific areas of concern relates to the comment period, particularly to the extension time frame for comments. Since the comment period was initially only expanded for 30 days, and then for another 30, comments on the proposal are due before the majority of the pesticide applicator recertification training is conducted, traditionally January through March. By extending the comment period to include at least part of this time frame, the agency would have had an opportunity to inform and receive feedback on the proposed regulatory changes from a significant number of certified applicators who will be directly impacted. Setting a deadline of January 22, 2016 for comments is a missed opportunity for the agency to obtain valuable input from applicators. It is the overwhelming

consensus of the AAPSE membership that, as a result, decisions will be made by regarding the proposed rule without input from the stakeholder audience that will be impacted the most by the proposed regulations. The pesticide education and regulatory programs simply do not have the financial resources needed to contact all certified applicators regarding these proposed changes. AAPSE feels strongly that the comment period should have been extended to include the entire January to March recertification meeting time frame so educators and regulators would have been afforded the opportunity to inform certified applicators about the proposed regulatory changes.

The following are the items in the proposed changes that AAPSE is formally commenting on with our suggested recommendations for consideration.

Definition of “Use”: Of these proposed changes, the most significant concern of AAPSE starts with the definition of “use.” As was recently pointed out in an email to the AAPSE membership from our colleagues at the Cornell Pesticide Safety Education Program:

Definition of Use:

The definition of “use” in Part 171.3 defines “Use,” as “TO USE A PESTICIDE” under section (1) (i) to include “ARRANGING FOR THE APPLICATION OF THE PESTICIDE.”

As a result, AAPSE’s interpretation of this definition, combined with the proposed changes, is that it is unlawful for anyone but a certified applicator, or someone working under a certified applicator’s direct supervision, TO USE A RESTRICTED-USE PESTICIDE. In addition, it would be a violation of the proposed regulation for anyone but a certified applicator or someone working under a certified applicator’s direct supervision to “ARRANGE FOR THE APPLICATION OF THE PESTICIDE” since arranging for the application is defined as “use.”

The concern regarding the proposed definition of “use” is more clearly illustrated in these examples. Based on the current language, a homeowner or employee of a commercial business would have to be certified (or working under a certified applicator’s direct supervision) to “ARRANGE FOR THE APPLICATION” by an employee of a pest control business of a restricted-use pesticide (such as the use of tracking powder for rodent control). Likewise, any farmer would have to be certified (or supervised) to hire a commercial agricultural application company to spray his/her crops with a pesticide classified as an RUP.

In addition: The definition of “use” under 171.3 also includes post-application activities such as transporting or storing pesticide containers that have been opened; cleaning equipment; and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other materials contaminated with or containing pesticides. Using the same assumption as in the original illustration, it would seem that anyone who is cleaning equipment, simply storing pesticide containers that have been opened or even washing shovels used in spill cleanup would have to be a certified under this definition of “use.” These proposed definitions of “use” are counterproductive for many reasons. Many farmers and commercial businesses, such as food handling establishments, hire commercial firms to make RUP applications so they do not have to become a certified applicator, and expecting a homeowner to get certified in order to hire a pest control business is not what AAPSE expects to be EPA’s intent regarding this definition. In addition, to expect certification is required for anyone who is simply storing a pesticide, cleaning or working on equipment, or other activities listed under this part of the definition of use seems excessive and unnecessary.

Recommendation: Eliminate the wording “arranging for the application of a pesticide.” An additional option is to more clearly define “use” by keeping a more broad definition by using the terminology “use of the application of a pesticide in the production of agricultural crops or other purposes by a pesticide applicator.”

Addition, Revise and Delete Certain Definitions: EPA proposes a number of new, revised and deletion of definitions listed at 40 CFR 171.3. AAPSE, like AAPCO has some serious concerns regarding the proposed definitions of the words “application”, “mishap”, and “use”. AAPSE has addressed some of its concerns regarding the definitions earlier in this document. AAPSE’s remaining concerns regarding the proposed definitions is discussed below.

- 1) The term “application” as written in the proposed rule would include: “the dispersal of a pesticide on, in, at, or around a target site.” AAPSE, like AAPCO believes the inclusion of the word “around” in the definition will probably be interpreted as allowing pesticide overspray or drift, since a target site is a specific defined area where a pesticide is applied. AAPSE urges EPA to eliminate the word “around” from this definition.
- 2) The term “mishap” is inconsistent with terminology that is used for by states to describe a pesticide incident or event. AAPSE encourages EPA to either remove this from the proposed rule, or revise it so it is more consistent with the terminology that is already used by states in their statutes and/or regulations.

Minimum Age Requirement and Impact on Training Programs such as FFA and 4-H: Establishing a consistent standard for a minimum age for pesticide applicators is a positive step for EPA to propose. AAPSE is in agreement with the establishment of the minimum age of 18 for those individuals certified as commercial applicators. However, for Private Applicator Certification, designating the minimum age of 18 is not consistent with the immediate family exemption of 16 years of age in EPA’s Worker Protection Standard (WPS) rule, 40 CFR Part 170. In addition, the Fair Labor Standards Act (FLSA) establishes a minimum age of 16 for youth in agriculture engaged in occupations deemed hazardous by the Secretary of Labor. See 29 U.S.C. 213(c)(2). This includes persons handling toxicity category I and II pesticides in agriculture. See 29 CFR 570.71(a)(9). Many high school agricultural programs currently include curriculums to prepare their students to pass the private applicator examination to assist the students in potential employment within the agricultural industry, including greenhouses and ornamental nurseries. This also provides a greater opportunity for focused formal pesticide safety education by instructors as opposed to a self-study process. Many of these students would be unable to benefit from this formal education if the proposed change is adopted and the minimum age requirement remains at 18 years of age.

Another issue regarding the age limit pertains to that of the non-certified applicator. Non-agricultural businesses rely on summer employees, who are sometimes family members that would be classified as non-certified employees. These employees may engage in the application of pesticides under the supervision of a certified applicator. In the case of family owned businesses, limiting the age to 18 for non-certified applicators would prevent younger family members from learning the family business, such as in the lawn and landscape business and structural pest control industry.

Recommendation: For consistency with the WPS immediate family exemption and the Fair Labor Standards that set the minimum age of 16 in agriculture, including the application of Tier I and Tier II

Chemicals, AAPSE feels that the minimum age should be 16 for those individuals working under the direct supervision of a certified applicator or members of the immediate family. To do otherwise could potentially be viewed as age discrimination. This should pertain to both Private and Commercial applicator certification of immediate family members and that of non-certified employees. This would include grandfathering those individuals that are 16 years of age and who are currently certified. EPA's recommendation for establishing a minimum age requirement of 18 years of age for non-family member Commercial applicators is appropriate.

Length of Recertification Cycle: EPA has indicated that 31 states currently have a certification period of three or fewer years. They have also acknowledged that those states with a five-year certification period have expressed concerns regarding the impacts and significant burdens of shortening the certification period. The concerns of AAPSE members representing both the education and regulatory perspectives is that in most cases moving from a five-year to a three-year certification period would involve a change to statutes requiring legislative action, in addition to changing their regulations, both of which can be an extremely lengthy and time consuming process. In addition, these states would incur significant costs associated with this proposed change in the form of both time allocations needed by personnel and the required budgetary resources needed to implement this change. Labor allocations would be needed from the pesticide program's perspective and those responsible for computer programming—whether they are in-house or contracted.

Recommendation: AAPSE proposes that a five-year maximum certification period be established. This will satisfy EPA's objective of establishing a maximum timeframe for certification on the Federal level, while accommodating those states that currently have a five-year certification period and lack the necessary resources to implement the proposed change. This still allows for a continual certification period where applicators could receive training to keep current with changes on an ongoing basis, but just over a longer period of time.

Requirement that 50% of the Credits be Accumulated within the Last 18 Months of the Cycle: Similarly, to the justifications used for the establishment of a three-year certification period, the requirement for tracking the accumulation of training credits within designated time frames would not only be time consuming and expensive from a records management perspective for regulatory programs, it would also be a significant burden for applicators. This process would require even more personnel and financial resources to implement than would be required for implementing a standardized certification period. An unintended consequence is that it may encourage applicators to wait until the final months when credits are offered prior to their certification renewal which would mean a need for additional recertification opportunities to be scheduled and/or larger audiences during those presentations. It is also unfair to an applicator who is diligent and gets more than half of the required credits in the first part of the cycle, less than half in the second part, but the total required (or more) altogether would lose his/her certification. If the intent is to encourage attendance over the entire course of the recertification cycle, this proposal does not accomplish this goal.

In addition to the resource commitments, this would greatly impact the way training is currently available, particularly for the commercial categories of certification with smaller numbers of certified applicators, i.e. agricultural animal, seed treatment, forest, and aquatic. Due to the small numbers of applicators in some of these categories and the limited availability of existing training material for these categories, additional training sessions would need established in order to assist applicators in satisfying these requirements. The educational resources are simply not available to accomplish the additional training that would be needed.

Recommendation: Eliminate of the requirement for applicators to accumulate any amount of their recertification credits in a certain time frame of the certification cycle. The resources are not available from an educational or regulatory standpoint to implement this proposal.

Increased Training Requirements and Accumulation of Recertification in Specific Topic Areas: Although not specifically mentioned in the proposed changes, in the Preamble EPA designates 50 minutes as the length of time required for an applicator to accumulate one credit of training. Nowhere in the proposal is the impact of this assignment of time per credit. For states that currently require 30 minutes per credit, this would in essence double the number of required credits for recertification. This does not allow for flexibility by the states to adequately assign credits for presentations. In many situations, the subject matter can be thoroughly covered in a 30-minute time frame depending on the subject, or extending the presentation over 30 minutes would go beyond the attention span of most applicators, thus being detrimental to the comprehension of the material by the applicator.

The proposal also contains requirements for applicators that are certified in multiple categories to accumulate recertification credits for each category in which they are certified. This would be an increase and burden to the applicator from both a time and financial standpoint that could potentially lead to redundant training. Educators would also consider this an increased burden; additional recertification training opportunities would need provided just to satisfy the regulatory requirement. As mentioned above, this could lead to redundant, repetitive training. This in turn could make training programs less effective and not satisfy the needs of applicators as intended. From the perspective of the regulatory membership of our association, they indicated that states already experience difficulty finding adequate materials, especially for the specialty categories. They also indicated that some categories require more education than others, hence a one size fits all recertification credit requirement is not a practical solution. For example, turf and ornamental pesticide applications require significantly more continuing education because of the increased number of potential pest problems and control options than for those individuals working in the rights of way industry, where applicators primarily focus on weed and brush control.

Recommendations: Allow for more overlap and give states the right to decide if/how to assign credits, or allow states to approve an entire workshop for one or more categories.

Non-Reader Certification for Private Applicators: EPA acknowledges that the provisions in FIFRA prohibit the agency from requiring private applicators to take an examination in order to become certified. As an alternative to the examination process for certification, EPA is proposing an option for non-readers to become certified by completing a training program. However, they do not provide a listing of possible subjects that can be used for establishing competency. Based on this premise, they are also putting the onus on the certifying agency to assess the reading comprehension of an individual and develop the specific competencies required for the training program. There is no clear guidance provided in the proposal on how the certifying agency is to assess reading comprehension. As was noted by EPA, the applicator who is a non-reader could have someone read the product label to them in order to provide the necessary information to make a safe application. This same process can be used whenever label changes are made. When these label changes occur, they are frequently included as part of recertification education programs offered for certified applicators.

Recommendation: Although some states do see the need to continue the option of non-reader certification for applicators and grandfathering of those who currently hold certification through this

process, comments from the majority of the AAPSE membership does not agree. The majority consensus of the membership recommends that the non-reader certification for private applicators be eliminated because, at a minimum, applicators must demonstrate the ability to read and comprehend the pesticide label..

Establish Direct Supervision of Non-Certified Applicators: This subpart of the proposal, 171.201 contains several areas of concern for AAPSE. By EPA's own admission in the preamble of these proposed regulatory changes, it is stated that of the tens of thousands of non-certified applicators that make RUP applications on an annual basis, only six incidences could be cited from 2006 – 2010 where non-certified applicators experienced a high severity health impact from working with RUPs. AAPSE expresses the following concerns for listed sections of this Subpart and makes the following recommendations for revising the proposed changes:

General Requirements Section for Non-certified Applicators:

The minimum age requirement that non-certified applicators be at least 18 years old.

Recommendation: For the reasons stated previously regarding the minimum age requirements, for those working in agricultural production, and family members working in commercial establishments, the minimum age should be 16.

Should EPA limit the number of non-certified applicators a single applicator can supervise? Comments from states that do not place a limit on the number of non-certified applicators that can work under the supervision of a single certified applicator indicate that placing a limit on the number of individuals that can be supervised is not necessary. Supervisory competency and capability can vary significantly from one certified applicator to another. Certified applicators who take on this responsibility are also accepting the liability that comes with this task, and as a result are not likely to extend themselves beyond reasonable limits placing their certification in jeopardy.

Recommendation: EPA should not place any limits on the number of non-certified applicators that can be supervised by a certified applicator. This is another proposal that should be left to the discretion of the states if they wish to place a limit on the number of non-certified applicators that can be supervised. In reality, the certified applicator is the best judge of his or her supervisory limitations and capabilities.

Would non-certified applicators and their supervisors rely on cell phones rather than two-way radios as a means to establish communication? This is another area that in this day and age of technology seems like a simple question with a simple answer. However, in many areas of the country cell phone signals vary from non-existent to not reliable and signal reliability sometimes even varies on a day by day basis depending upon the weather.

Recommendation: Any proposal for communication between non-certified applicators and the certified applicator should allow for best technology available to facilitate direct communication. This will also allow for ever changing technological advances to be options as they become available in the future.

Should EPA require certified applicators to be within a certain distance of non-certified applicators? This depends on the level of training that has been provided to the non-certified applicator. For example, some states have provisions for the credentialing of non-certified applicators, commonly referred to as Registered Technicians. These individuals are not certified applicators because they are

not actually certified but are required by the states with these requirements to either take and pass exams developed specifically for this level of applicator, or receive a significant amount of designated training in order to establish a level of competence to allow these individuals to make applications in the absence of a certified applicator. In most cases, states with these programs have provisions that a certified applicator must have the capability to be present within a certain time frame, usually less than 5 to 10 hours. However, for those individuals who have received little or no training, they must be within sight of a certified applicator.

Recommendation: Because of the significant complications this requirement is likely to cause due to geographic diversity, cropping patterns and other state specific issues the consensus of the AAPSE membership is that this decision is best left up to the discretion of the individual states.

The certified applicator must ensure that equipment is inspected before each day of use and any damaged equipment is repaired or replaced prior to use. This proposal is the equivalent of saying that every time before you drive your car you have to inspect it for leaks, clogs, and worn or damaged parts and the car could not be driven until anything that is found is repaired or replaced. Both suggestions are neither practical nor realistic.

Recommendation: The proposed change should be reworded to indicate “equipment should be checked frequently enough to ensure that it is in good working order to protect non-certified applicators and the environment from unintended releases of a pesticide due to faulty equipment.”

Regarding the proposal that the employer is required to provide and ensure personal protective equipment is worn: It is both reasonable and prudent that the employer is required to provide the personal protective equipment (PPE) required by the pesticide label, as is the requirement that training is provided on how to properly use the PPE. However, holding the certified applicator responsible for ensuring that PPE is worn, and used correctly, is not practical. The non-certified applicator must take personal responsibility to wear the PPE in the manner they were trained. Unless the certified applicator is within sight to monitor non-certified applicators, there is no way they can possibly be held accountable if the PPE is not worn. A similar analogy would be the use of seat belts. It is required that they be used, and it can be stated to employees that they have to be worn. But once that employee leaves the office, the employer has no control over whether or not the employee wears the seat belt. The employee knows the law and company requirements, but it is their choice if they do not want to wear it. If the employee is trained on the PPE requirements and proper use, and the employer provides appropriate PPE in good repair that is about the extent of what a certified applicator can be expected to do.

Recommendation: The proposed change should require the certified applicator to provide training on PPE and the proper use along with the PPE required for the pesticides that the non-certified applicator will be using. It should also be required that the employer or certified applicator is responsible for providing non-certified applicators with the appropriate PPE, and in good repair, for the pesticides that will be used.

Private Applicator Competency: The consensus of AAPSE members is the importance that all applicators demonstrate the ability to apply pesticides in a manner that protects both human health and the environment. However, the underlying concern of both the regulatory and educational members of AAPSE is that nowhere in the proposal, either the preamble or body of the proposed changes, is the competency for private applicators clearly defined. The general consensus of the membership is that the

competency standards for private applicators should be limited to basic concepts relating to pesticide use. These competency standards would pertain to an understanding of the following: regulatory requirements; the pesticide label, including an understanding of knowing the difference between mandatory versus voluntary label language; and what each specific section of the pesticide label means. The basis for this information should be on the protection of human health and the environment. There is also a general consensus among members that EPA did not clearly demonstrate, or provide examples, of a lack of applicator competency. In addition, the agency did not include actual examples to substantiate the premise that state certification programs are not adequately training competent applicators. Furthermore, most AAPSE members are not convinced that more training leads to improved applicator competency. Over and over again, the question has been asked, “Show me the problem that we are trying to fix that has not already been addressed individually by the states”, in conjunction with “Tell me how these proposals are going to fix a specific problem.”

Recommendation: A more specific set of standards considered necessary for applicator competency needs to be outlined. As part of this process, consideration needs to be given to competencies that will address the general skills required to ensure the health and safety of applicators and the environment, but not specific to skills performed only for certain application methods, crops, or types of applications.

Exam training and security: Should EPA consider an exception for requiring government-issued identification? If so, under what circumstances and what options are available? This is another area where in theory it seems like a simple provision that would be easy to implement. However, there are areas of the country where large populations of Anabaptist growers, commonly referred to as Amish and Mennonite, who because of their religious beliefs will not have the ability to have access to, nor will provide, a government-issued identification as proposed. This is due to the fact that their religion prohibits them from being photographed. In many cases the use of specific alternative methods of identification, such as utility bills is not a viable alternative either. Because of the same religious reasons these growers do not have electrical or telephone services. Any requirement for verifying an applicators identity must include the flexibility to allow states with these populations the latitude to make exceptions for accommodating religious and other concerns.

Due to the considerations mentioned above, the consensus of the AAPSE membership is that requiring verification of an individual’s identity at the time of examination is considered prudent and an acceptable proposal, provided states are giving them flexibility on what is considered acceptable documentation. However, the majority of the membership strongly feels that this requirement for recertification training would be overly burdensome and unnecessary. Many courses have hundreds of participants, many with multiple breakout sessions, and requiring verification of the identity of each participant beyond recording their applicator certification number would not only create an unnecessary burden, and logistical nightmare, but would also detract from the overall content of the meeting and time that could be better spent delivering educational material.

Recommendation: AAPSE is in support of the proposal for the use of government issued identification for verifying an individual when examinations are administered, provided states are given the flexibility to use alternative means of identification acceptable to the state in order to accommodate those religious groups that do not allow the use of government identification. However, AAPSE is in strong opposition to the requirements of verifying identification for recertification training.

Pollinator Protection Competencies and Classification of treatment of bees as Animal Agriculture: The same can be said for competency standards addressing specific issues, such as pollinator protection. The

consensus of comments received on this issue from both regulatory and educational members indicate that, like many of the competency standards required for applicators, are label driven. In the case of pollinators, these competencies would mirror the new label language specific to bees.

In regards to the issue of including the treatment of bees and bee hives under the category of Agricultural Animals, this neither makes sense in theory or practice. Here again, these competencies are label driven and would fall under the general purview of private applicator comprehension of the label and its contents. In addition, currently the only RUP's that may potentially be applied to bee hives are fumigants, and this application method is more of a treated space issue than a bee issue.

Recommendation: This information would be incorporated as part of initial and recertification training programs for applicators. The same could be said for soil fumigation and other proposed sub-categories. The consensus of comments from our regulatory membership is that these issues are better addressed between the states and EPA as part of the state certification plans.

Specific application method or certification categories: In regards to the proposed changes for adequately establishing competency standards for specific or specialized application methods the consensus of the membership is that most states have already addressed this issue and adopted categories that pertain to these uses. It would be pointless to require a state to adopt categories for which there is no purpose. For example, because of their crops and cropping patterns many states do not use soil fumigants. When it is necessary to use these products there are mandatory label requirements for training prior to using these products. Many members feel that this would require applicators that are already trained to use these products in a competent manor to add additional categories. This would result in the need for additional recertification training for these applicators that would also incur additional costs associated with the training. For example, a greenhouse grower who has been trained and certified and receives recertification in areas of pesticide use specific to greenhouse production is already trained and competent to apply chemicals using chemigation. Requiring them to have a chemigation category of certification would be redundant.

Recommendation: This is one of many areas that the overall consensus is that decisions should be left up to individual states. If necessary those decisions could be made as part of the contractual agreement between the State Lead Agency and EPA in their state plan.

Addition of other categories: The vast majority of states have updated their certification categories to address concerns, or specific issues, regarding pesticide use and application methods within their state on an as needed basis. The consensus of the AAPSE membership regarding the addition of categories is something that should remain under state primacy rather than dictated from the federal level where these additional categories may not even pertain to the crops, cropping patterns or application methods used within a specific state. The same can be said for limited-use categories for commercial applicators. For example, to mandate that states have a certification category specific for the use of antifouling paints would be impractical for most states. This is another aspect of the certification and training requirements that is best addressed on a state by state basis and negotiated between the State Lead Agency and EPA as part of the state certification plan.

Recommendation: This is one of many areas that the overall consensus is that decisions should be left up to individual states. If necessary those decisions could be made as part of the contractual agreement between the State Lead Agency and EPA in their state plan.

Revise State Certification Plan Requirements: EPA has proposed that states will have flexibility in how they revise their state certification plans, but will mandate that states copy the requirements for the supervision of non-certified applicators exactly as published in the final rule. The proposed rule sets forth a timeline for states to submit revised plans, and for EPA to review and make a determination if the plans are compliant with the final rule.

AAPSE wishes to provide the following comments regarding state certification plans on behalf of the membership from the State Lead Agencies (SLAs) that are impacted by the proposed revisions to the plans and will be involved in submitting, revising and reviewing these plans.

- 1) The AAPSE membership representing the SLAs believes the two-year time period provided to states for submitting revised certification plans is insufficient, given the complexity of how many state government systems are structured. Many states will be faced with a near impossible undertaking; they will be required to provide a near-final draft of their revised certification plan in order to promulgate revised statutes and regulations, which in turn are necessary for the state agency to know how to revise their plan. In states with biennial legislative sessions, this means it will take longer than two years for the SLA to submit revised statutes and obtain approval, provided there is no political push-back from legislators. Some SLA members have indicated they believe the number and extent of changes will be so large that they might never be able to get their state legislatures to accept the proposed law and regulation changes, thus preventing the SLA from ever submitting a revised plan to EPA. AAPSE urges EPA to revisit this timeline and extend the time frame for the states to submit their revised plans to a minimum of three-years, and include another three year period during which EPA and the states will negotiate the acceptance of the final plan. AAPSE also encourages EPA to clearly indicate in the final rule the specific time frames that states have to revise and submit plans to EPA, and for EPA to review the revised plans, so there is an open and transparent process for carrying out these negotiations with the states. Without this language in the final rule, state lead agencies will have a much harder time convincing state elected officials that the federal rule is justified.
- 2) State Lead Agencies are also very concerned about the potential impact to their delegated primacy should EPA decide that a state's certification plan is unacceptable. Due to this possible outcome, AAPSE encourages EPA to include in the final rule a clear and understandable outline showing the expected process by which the state and federal agency will work toward a mutually acceptable outcome, and what the consequences to the state will be if EPA cannot accept the state's revised plan. SLA members have indicated that this is a question that has already been asked by agency heads and state legislators. State pesticide programs have been unable to provide an answer to this question.

Recommendation: AAPSE supports the recommendation put forth in the AAPCO comments for these issues.

Program Reporting and Accountability: EPA proposes: To require all license types and categories be reported annually by states by providing data on new, recertified and total applicators, and Require that states report the number of new, recertified and total applicators holding the categories and subcategories identified in the state's certification plan, and a narrative description of enforcement actions taken for any violations of federal or state laws and regulations involving RUPs during the reporting period.

- 1) Should EPA require all license types and categories be reported annually by states by providing data on new, recertified and total applicators?

AAPSE recognizes that FIFRA currently requires states to report certification data similar to what is proposed in the rule. However, if the proposed rule is implemented as written, the reporting requirements for state programs will increase dramatically, increasing the demands placed on the states to implement the provisions of the proposed regulations.

- 2) Require that states report the number of new, recertified and total applicators holding the categories and subcategories identified in the state's certification plan, and a narrative description of enforcement actions taken for any violations of federal or state laws and regulations involving RUPs during the reporting period.

AAPSE supports AAPCO's position of objecting to section 171.303(c)(1)(x) that would require states 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 requirement would require the agencies to submit data they already reported to EPA's Office of Enforcement and Compliance Assurance, and as part of the recently revised Enforcement Performance Measures (see the *2015-2017 Cooperative Agreement Guidance, Section VII. (Reporting and Enforcement Measures)*). The Cooperative Agreement Guidance that states must follow was revised so all states would use a national, standardized template to establish mutually agreeable objectives and reporting criteria. EPA and AAPCO worked for several years to revise and adopt these significantly improved reporting measures that incorporate a significant amount of the information EPA is proposing as part of the certification and training rule. This requires states to expend already stretched resources to provide EPA with data that has already been reported to EPA. AAPSE WG strongly encourages EPA's Office of Pesticide Programs to consult with EPA's Office of Enforcement and Compliance Assurance to share this data that states are already reporting to prevent this duplication.

Recommendation: AAPSE supports the recommendation put forth in the AAPCO comments for these issues.

Certified Applicator Credentials: EPA proposes uniform information be displayed on issued applicator licenses. AAPSE believes this proposed requirement is unjustified and any state-issued certification should be left to each state to address their specific needs and requirements. Requiring states to implement a national format for certificates is another example of an unnecessary burden placed on states as part of these proposed requirements and there is no apparent benefit to the states in having national consistency. According to our members there are some cases where the content and format of a state-issued certificate is not controlled by the state lead agency. This could result in a state having a state plan that would not be acceptable.

Recommendation: AAPSE supports the recommendation put forth in the AAPCO comments for these issues.

Reciprocal Applicator Certification: EPA requests comments on the following: 1) Are there approaches to facilitate reciprocity that would minimize burdens and disruption at the lead agency level and improve protections? Should EPA require all States, Tribes and Federal agencies to adopt the same certification standards and to mandate reciprocity between states? 3 Is there any other information related to reciprocal certification that EPA should consider incorporating into the regulation?

AAPSE is in support of AAPCO's position that a national standard for certification through reciprocity is unreasonable and fails to recognize specific components of each state program that has been developed to address specific issues and concerns, often raised by their constituents. It is AAPSE's understanding that some states may discontinue the process of offering reciprocity, since it is time consuming for the states and there is no added benefit to their certification program by offering reciprocity.

Recommendation: AAPSE supports the recommendation put forth in the AAPCO comments for these issues.

Implementation and additional questions asked by EPA that pertain to regulatory aspects: The proposed rule stipulates the effective date of the final rule will be 60 days after publication in the Federal Register, existing state certification plans could remain in place for up to four years after the effective date, and thereafter the plan must meet all standards of an EPA-approved plan. It stipulates that states would have two years after the effective date to submit revised certification plans to EPA for review. EPA asks for comments on the following questions: 1) Would states be able to submit revised certification plans within 2 years of the effective date of the rule? 2) Would states need additional time after EPA approves the revised state certification plan to implement their new state plan? 3) Would the implementation schedule be reasonable if EPA provided exams and training materials for the proposed changes? 4) What support would states need to receive during the implementation of the final rule? 5) What time frame would be needed for EPA to evaluate the effectiveness and impacts of the final rule? Please provide any ideas of methodology of such evaluation. These are areas of the proposed regulations that the regulatory members of AAPSE have been well represented in the comments submitted by the American Association of Pest Control Officials (AAPCO). As a result, APPSE would concur with the recommendations provided in AAPCO's comments.

In addition, AAPSE would yield to AAPCO's response in regard to the following questions that specifically deal with issues under the control of state regulatory agencies:

- Should EPA consider other types of information on required records for RUP dealers or commercial applicators?
- Should EPA consider requiring states to make available publicly a list of all applicators holding a valid certification? If so, should the list be available electronically? Should the list be updated in real time, or would periodic updates be acceptable? If periodic, what period would be acceptable?
- Should EPA consider requiring certifying authorities to require their commercial applicators to report incidents that would meet the reporting criteria of 40 CFR 159.184 if known to the pesticide registrant?

Economic Assessment: Of all of the areas of the proposal that AAPSE has concerns, our members are in strong agreement and strenuously object to the economic assessment made by EPA to calculate the impact the proposed regulations would have on the states. EPA's economic analysis considers both the cost and benefits of the proposed changes. To say that EPA's financial calculations of the economic analysis falls far short of a more realistic economic impact that fully addresses the true cost on states and pesticide applicators of implementing the proposed rule, would be a significant understatement. The following example illustrates the magnitude of these concerns. Although it only represents the differences for one state, AAPSE members that have used the same economic model have found similar orders of magnitude between the estimated costs made by EPA and those that represent a more realistic cost as calculated by the Texas A & M model.

The Environmental Protection Agency (EPA) published a report entitled "Economic Analysis of Proposed Amendments to 40 CFR Part 171: Certification of Pesticide Applicators" that describes the agency's "analysis of the costs and benefits of the proposed changes in the regulations governing the Certification of Pesticide Applicators to meet the requirements of Executive Order 12866 on the Regulatory Planning and Review, the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, and the Unfunded Mandates Reform Act." However, based on an extensive review conducted by AAPSE President Don Renchie, in partnership with agricultural economist colleagues at Texas A & M, including: Dean A. McCorkle, Dan Hanselka, Don Renchie, Mark Matocha, and Janis Reed, several key economic costs were identified that were not taken into account by EPA and should have been included in order to fully assess the true economic costs associated with the proposed regulatory changes.

- For Private applicators, this economic impact includes loss of revenue due to being away from work and increased expenses of the associated travel costs to attend these additional certification trainings that are required by the proposed changes.
- For Commercial applicators, the economic impact would also include lost revenue due to being away from work and the costs of associated travel to attend these additional meetings. In addition, in many states, the scope of Commercial applicators, would include those individuals who make applications using any classification of pesticide because these states do not differentiate between applicators who apply restricted and general use pesticides.
- For states, the additional expenses include personnel costs for Extension Service agricultural agents and specialists for their time to develop educational materials and for their increased travel costs resulting from conducting additional certification training meetings to satisfy the proposed regulatory changes. Frankly, these are only minimal costs and do not include those expenses associated with revision of state laws and regulations to incorporate the proposed changes, that could also be significant.

Based on Texas A & M's model that includes these additional costs referenced above, a much more accurate picture of the actual financial burden is portrayed. The results from this model indicate that the cost of implementing the proposed changes is exponentially more significant than those provided by EPA. For example, using the Texas A & M model, it was estimated that the annualized economic cost for implementing the proposed changes in Texas alone is shown below:

- The additional economic burden to Private applicators would be \$28.5 million dollars as opposed to EPA's estimate of \$106,000.
- The additional economic burden to Commercial applicators would be \$29.3 million as opposed to EPA's estimate of \$840,000.

- The additional economic burden to the state for oversight of the pesticide Certification and Training program would be \$124,000 as opposed to EPA's estimate of \$8,810.

Other states have also used this model to accurately calculate more realistic economic impact on pesticide applicators, state regulatory, and educational agencies within their state. With no exceptions, other than a slightly smaller cost margin, all states found similar orders of magnitude between the cost analysis calculated using the Texas A & M model versus the economic analysis and the costs provided by EPA. While these economic assessments may vary from state to state, it was almost universally shown that there was a significant increase in the estimated costs to state programs. These costs are not just small percentages over what the EPA's economic assessment presented, but in the magnitude of ten fold over EPA's. This cost discrepancy alone should be of major concern to EPA and urge them rethink the financial impacts these proposed regulatory changes will actually have on state programs and applicators.

CONCLUSIONS: One of the most significant concerns regarding the implementation of many of the proposed changes is that it will require many states to revise current state laws and regulations in order to meet the new federal mandates. The general consensus of the AAPSE membership is that the EPA proposal does not factor in the magnitude of the potential impacts that state lead agencies will be facing from both a political and pragmatic standpoint to accomplish these changes. The implementation of the proposed regulations will be an extensive process for states to undertake, especially if all of the provisions are adopted. This will be both time consuming and extremely costly for the states to implement. The implementation of these regulations will take a substantial effort of not only state lead agency personnel, but also educators, industry and applicator representatives who must be involved in this process. The implementation of these regulations by many states will be compounded by the currently political climate within these states where legislators are opposed to increasing regulatory burdens. This will especially hold true for these regulations since there will be no additional federal financial support given to states to help them implement these changes. The states will need to rely on funding from obtained within the state, either general funds or funds generated by the program. This will result in the need for the state programs to increase licensing and certification fees in order to implement these changes. A statutory change is often required for fee increases and in support from elected officials will be even more difficult since this will be likely viewed by them as another unfunded mandate by the federal government. Most states have worked diligently to address issues as they arise within their state and implement necessary state regulatory changes to help ensure the continued safe use of pesticides to protect pesticide applicators, workers along with consumers and the environment.

Equally concerning for state lead agencies, educators, and more significantly applicators and the businesses they work for will be the cost of compliance. EPA's economic assessment of the proposed rule did not take critical data into account that radically changes the practical reality of the economic impact to state regulatory agencies, educators who provide training, and most importantly to pesticide applicators. Using the economic assessment tool developed by Texas A & M it appears that the increased costs for states to implement the proposed changes have been underestimated in magnitudes

from ten to fifty times greater than those of EPA's estimates. Not just from the lead agencies perspective of restructuring their program to be in compliance, but also from the standpoint of educators who will also incur significant costs to adapt and develop new educational programming, exams and training materials to satisfy these changes. In addition, recertification training programs will need to be adopted and created to meet the proposed changes that increases the number of categories, time required for training, training delivery and content, and other aspects of proposed changes that impact the examination and educational components of the program. There is already a sufficient lack of resources available to educational programs and states to meet the needs of implementing the current federal pesticide regulations. The addition of many of these proposed changes would require a significant amount of additional funding that will not be provided on a federal level to the states and educational programs for implementing these changes. Some states have even suggested that these added costs will be so significant that they would have to turn the certification program back over to EPA to administer. If this were to happen even on a small scale, it is doubtful that EPA, either through the regional offices or headquarters, has the necessary resources to take on applicator certification programs and ensure the public that applicators are adequately trained and competent to use restricted use pesticides.

In regards to pesticide applicators and pesticide businesses these costs will include, but are not limited to the additional training required by the proposed changes because of the increased amount of time required per recertification credit, the number of credits required to renew a certificate, and the need to be certified in additional categories. The overarching concern of both the regulatory and educational programs is that if these additional recertification training requirements are placed on applicators they will choose to maintain their certification by retesting given the option. Most educators do not feel that recertification by retesting will either ensure, or increase, an applicators level of competency.

The consensus of the AAPSE membership is that EPA should continue to allow states through primacy to implement the majority of the proposed changes. Through this process the implementation can be accomplished in a way that is the most efficient for each state program and still provides the level of applicator and environmental protection that EPA is seeking. In the preamble EPA notes that over the last eighteen years the states have requested that changes should be made to the national applicator certification program. However, survey results from the regulatory members of AAPSE indicated that most states have taken action on their own to update their pesticide certification programs over the past five years. These changes include the addition of applicator categories that meet and address the needs of specific crops and application methods relevant in their particular state for applicators using RUP and general use pesticides. AAPSE's overriding concern regarding EPA's proposed changes is that they are trying to use a one size fits all regulatory structure that is not efficient and does not address specific state needs.

RECOMMENDATIONS: Recommendations have previously been provided as each area of concern was addressed. In addition, many AAPSE members have provided comments individually based on the specific impact that the proposed regulations will have on their individual states. However, in general the consensus of the majority of the AAPSE membership in concurrence with the recommendations provided in the comments submitted by the American Association of Pesticide Control Officials.

Respectfully submitted,



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