EPA’s Proposed Revisions to the Applicator Certification Rule

August 2015
Certification Overview

• The federal Certification of Pesticide Applicators Rule has been in place since 1974
  – Establishes requirements for determining the competency of applicators of restricted use pesticides (RUPs)
  – Sets standards for States, Tribes and Federal agencies to administer programs to certify applicators

• The Certification rule covers private applicators, commercial applicators, and those using RUPs under their direct supervision
Applicator Classification

• Private applicators – certified to apply RUPs to own or employers’ property in producing an agricultural commodity, e.g., crops grown for food, raising livestock
  – ~489,000 private applicators

• Commercial applicators – certified to apply RUPs “for hire” or on property owned by another for a variety of uses
  – ~414,000 commercial applicators

• Noncertified applicators – only authorized to use RUPs under the direct supervision of a certified applicator
  – Estimated: 947,000; actual number unknown
Certification Program Administration

• FIFRA authorizes states, tribes, and territories to certify applicators under a “certification plan” approved by EPA
  – The state/tribal/territorial certification plan must meet or exceed the standards in EPA’s certification regulation
  – Federal agencies can administer certification programs under 1977 policy

• EPA has approved certification plans for all 50 states & Washington D.C., 3 territories, 4 tribes, 4 federal agencies; EPA directly administers 2 certification plans

• Most states have adopted at least some standards more stringent than the federal standards; there is variance among states’ standards for various parts of the rule
Current Regulation

• Private Applicator Competency
  – Determine competency by attending a training course or passing a written exam
  – Competency standards are general – 5 points
  – Non-readers can be certified using special procedures

• Commercial Applicator Competency
  – Determine competency by passing exams – core and each category of application
  – Core competency standards are detailed – cover 11 major points and many sub-points
  – Federal categories cover variety of application sites – plant and animal agriculture, forestry, ornamental and turf, seed treatment, aquatic, right-of-way, structural, public health, regulatory, demonstration and research
Current Regulation

- Standards for Supervision
  - Certified applicators must demonstrate knowledge of supervisory requirements
  - Availability of applicator directly related to hazard of the situation; not required to be on-site unless specified by the labeling
  - “Direct supervision” includes guidance for applying the pesticide properly and provisions for contacting the supervisor

- Certification Plan Administration
  - How states develop and submit for EPA-approval state plans; must meet or exceed federal standards
  - State plan maintenance – only mention of ensuring continued competency of applicators
  - Government Agency Plan – single plan for certification of all federal employees
  - Tribal certification options – develop tribal certification program, rely on state certification program as basis for tribal certifications, participate in an EPA-administered certification plan
Reasons for Rule Change

• Pesticide Exposure and Incidents
  – Current pesticide illnesses to applicators and the public incidents may be avoidable
  – Studies show possible associations between pesticide exposure and adverse health effects

• Negative Environmental Impacts
  – Data on the damage associated with ecological incidents are difficult to capture and quantify
  – Review of EPA’s ecological incident database found 245 incidents from 2009 through 2013 where use of RUPs/likely RUPs damaged crops or killed fish, bird, bees, or other animals
Goals for the Proposed Revisions

- Reduce adverse effects resulting from avoidable pesticide exposures
- Ensure applicators meet the level of competency EPA assumes when registering a product as restricted use
- Encourage reciprocity between states to reduce burden on applicators and state certification programs
Proposed Changes: Private Applicators Initial Certification

Current Rule
• States require private applicators to attend training (no standards), pass a written exam, or demonstrate competency through an alternate mechanism
• Mechanism allows non-readers to be certified

Proposal
• Enhance competency standards to cover necessary information
• Require private applicators to pass a written exam for certification or complete training on the proposed enhanced certification standards
• Eliminate mechanism that allows non-readers to be certified
Proposed Changes: Application Method-Specific Categories

Current Rule
• No specific certification requirements to use certain application methods

Proposal
• Require commercial and private applicator certification for specific high-risk application methods
  – Aerial application
  – Soil fumigation
  – Non-soil fumigation
Proposed Changes: Exam/Training Administration

**Current Rule**
- Commercial applicator certification must be based on a written exam

**Proposal**
- Require private applicator exams, if offered, to be written
- Require candidates to present identification for initial and recertification exams and training sessions
- Codify policy requiring all exams to be closed book and proctored
Proposed Changes: Recertification

Current Rule
• States must have process to assure continued competency (no standards for the process or timeframe)

Proposal
• Establish 3 year certification period
• Commercial applicators recertify by exam or 6 hours training for core and each category
• Private applicators recertify by exam or 6 hours training for general certification and 3 hours of training for each category
• Require applicators to earn at least half of the required hours within 18 months of their certification expiration date
Proposed Changes: Minimum Age

Current Rule
• No minimum age

Proposal
• Require private applicators, commercial applicators and those under their supervision to be at least 18 years old
Proposed Changes: Noncertified Applicators

Current Rule

• Application of an RUP by “a competent person acting under the instructions and control of a certified applicator”
• No required demonstration of competency of noncertified applicator

Proposal

• Noncertified applicator establishes competency through:
  – Annual training on safety, application, personal protection, pesticide labeling
  – Passing the core exam or
  – Being currently qualified as a pesticide handler under the Worker Protection Standard (WPS)
Proposed Changes: Supervisors of Noncertified Applicators

Current Rule
• Supervising applicators must provide guidance for applying the pesticide properly and instructions on how to contact the supervising applicator

Proposal
• Supervising applicator must ensure noncertified applicators are qualified (maintain records for 2 years), and for specific applications provide labeling and instructions for the application
• Ensure that immediate communication is possible
Proposed Changes: State Certification Plans

Proposal – Certification Plans

• Certification plans must meet or exceed new standards and requirements
• Adopt the proposed standards for noncertified applicator training or prohibit the use of RUPs by noncertified applicators
Proposed Changes: State Certification Plans

Proposal - Reporting

- Reporting by category and subcategory
- Number, description, and narrative discussion of enforcement actions taken for incidents involving RUPs
Proposed Changes: State Certification Plans

Proposal - Recordkeeping

• Specify contents of commercial applicator records, including qualifications of supervised applicators

• Require RUP dealers to maintain records
Proposed Changes: State Certification Plans

Proposal – Certification Credentials

• Certified applicator credentials must include specific content
Proposed Changes: State Certification Plans

Proposal – Reciprocal Certification

- Certification plans must specify whether, and if so under what circumstances, the state would issue reciprocal certification.
Proposed Changes: Federal Agency Certification Plans

Current Rule
- Government Agency Plan allows development of single plan to certify all federal agency employees using RUPs
- 1977 EPA policy allows Federal agencies to submit certification plans for EPA approval; must meet or exceed federal standards

Proposal
- Codify existing policy to allow Federal agencies to develop plans to certify applicators
- Federal agency certification plans must meet or exceed the standards in the proposed regulation
Proposed Changes: Tribal Certification Plans

Current Rule

- Tribes have the option to utilize state-issued certification to certify applicators; requires concurrence by the state(s) and an appropriate state-tribal agreement

Proposal

- Revise option to allow tribes to enter into an agreement with EPA to recognize certifications issued under other EPA-approved certification plans
Proposed Changes: Definitions

- Proposal revises the following key definitions:
  - Compatibility, dealership, non-target organism, principal place of business, toxicity

- Proposal adds the following key definitions:
  - Application, application method, fumigant, fumigation, Indian Country, Indian Tribe, noncertified applicator, personal protective equipment, use, use-specific instructions
Proposed Implementation

- EPA will provide resources for implementation of the rule when finalized
  - Certification Plan and Reporting Database
  - Exams & Manuals
  - Other resource requested

- Timeframe
  - 2 years after final rule publishes – must submit revised certification plans reflecting the new rule requirements
  - 4 years after the final rule publishes, certification must be done in accordance with revised rule
  - Existing plans for states, tribes, and federal agencies that have submitted revised plans stay in effect until EPA approves the revised plan
Costs

• **Annual Cost:** $47.2 million

• **Private Applicator**
  – Per-applicator costs range from $0/yr - $124/yr
  – Average per-applicator cost: $40/yr

• **Commercial Applicator**
  – Per-applicator costs range from $1.34/yr - $212/yr
  – Average per-applicator cost: $66/year

• **State/Gov’t Agencies**
  – Annual costs range from $3,000/yr - $21,000/yr
  – Average annual cost:$6,700/yr
Benefits from Reducing Acute Incidents

• Reduce the effects of acute and chronic illness from RUP exposure
  – Primarily to certified and noncertified applicators, but also families, farmworkers, bystanders

• Estimated quantified benefits: $80.5 million annually
Comment Period

- The comment period will close 90 days after the proposed changes publish in the Federal Register
  - Published on August 24, 2015 - comment period ends November 23, 2015
  - May be lengthened if an extension to the comment period is requested
Tips for Commenting Effectively

- Organize your comments by topic area, e.g., private applicator competency, recertification, state plans

- Identify credentials and experience that may distinguish your comments from others – highlight any relevant personal or professional experience

- When possible, support your comment with substantive data, facts, and/or expert opinions

A single, well-supported comment may carry more weight than a thousand form letters. The Agency reviews form letters submitted during the public comment period, but the number received has less impact than the content
Resources for Developing Effective Comments

• [http://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf](http://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf)
How to Comment

• Go to http://www.regulations.gov - Search for the docket for the Certification proposal: EPA-HQ-OPP-2011-0183
How to Comment

- Look for the blue ‘Comment Now’ button
How to Comment

• Review your comment(s) & your personal information (if applicable)
• Click the small box that says, “I read and understand the statement above.”
• Click the blue ‘Submit Comment’ button.
Certification Proposal

Resources

• EPA’s website on proposed changes to the certification rule: http://www2.epa.gov/pesticide-worker-safety/epa-proposes-stronger-standards-people-applying-riskiest-pesticides

• Comparison of current certification rule and proposed changes: http://www2.epa.gov/sites/production/files/2015-08/documents/certification_rule_detailed_comparison_chart.pdf

• Full text of proposed changes to the certification rule: https://www.federalregister.gov/articles/2015/08/24/2015-19988/pesticides-certification-of-pesticide-applicators
Staying Informed

- To sign up for the EPA Pesticide Program Updates listserv: http://www.epa.gov/oppfead1/cb/csb_page/form/form.html
Questions?

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