

C&T Top 10 Issues from Proposed Rule Comments



**Western Region Pesticides
Meeting**

May 17, 2016



Top Ten List – First Draft

1. Recertification
2. Recertification
3. Costs are underestimated
4. Recertification
5. Recertification
6. Recertification
7. Implementation timing
8. Recertification
9. Recertification
10. Minimum age



Top Ten List

1. **Recertification**
2. **Implementation timing**
3. **Costs are underestimated**
4. **Minimum age**
5. **Supervision of noncertified applicators**
6. **Training of noncertified applicators**
7. **General use pesticides**
8. **Private applicator competencies**
9. **Tribal certification**
10. **Method-specific categories**



1. Recertification

Background

- Not having specific federal requirements for recertification has resulted in programs that vary greatly across the country

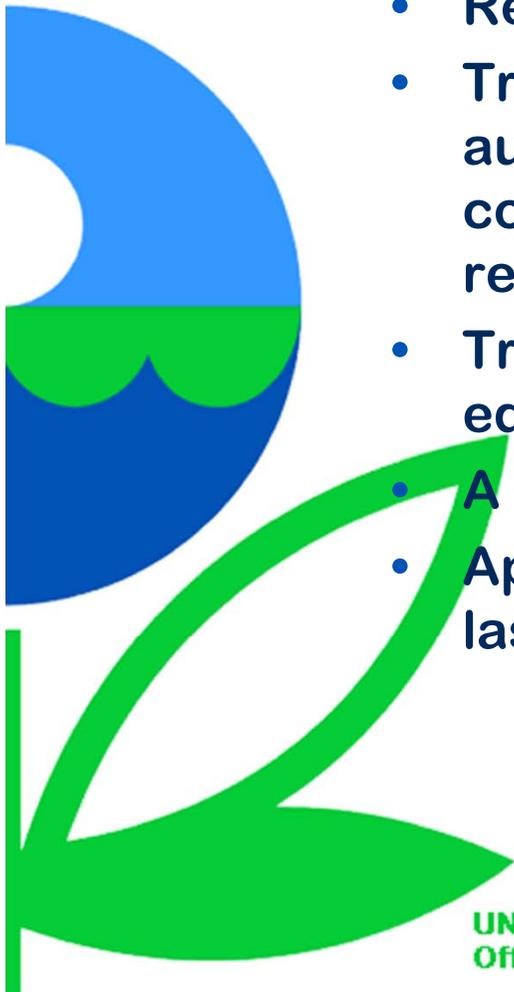
Current rule

- State certification plans should include provisions to ensure that certified applicators continue to meet the requirements of a changing technology and to assure a continuing level of competency and an ability to use pesticides safely and properly.

1. Recertification

Proposed rule

- **Applicators must recertify every 3 years**
- **Recertification must be done by training or an exam**
- **Training programs must be approved by the certifying authority and designed to ensure the applicator continues to demonstrate the level of competency required for initial certification**
- **Training must cover a specific number of continuing education units (CEUs) for core and per category**
- **A CEU defined as 50 minutes**
- **Applicators must earn at least half of the training in the last 18 months**



1. Recertification

Comments Overview

- Strong opposition from all commenter types: states, extension, applicators
- States oppose EPA's proposal of a one-size-fits-all CEU-based program that prescribes a specific number of hours
- States have invested resources in determining appropriate training programs; believe their recertification programs are effective
- All states would need to change their programs - high cost and burden
- Quality of training not taken into consideration
- States want an "equivalency" approach that allows states to take different approaches



1. Recertification

Comments Overview

- If the amount of training required is too high, applicators will opt to take exams so there would be little additional learning about current technologies, issues and regulations.
- There is value in covering core and category content but the actual amounts should not be mandated; a lot of topics covered in training covers both; tracking this would require changes to databases that would be expensive and were not accounted for.
- Not necessary for EPA to define length of CEU.
- Requirement to earn at least $\frac{1}{2}$ credits in last 18 months is unnecessary, unworkable and does not add benefit.

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1. Recertification

Comments Overview

- Effectiveness of training depends on a number of factors besides frequency (recertification period) and amount (hours of training per recert period) such as:
 - Content covered
 - Quality of the training (provider, training method, setting, etc.)
 - How to approve training providers
 - Auditing/assessing delivery of the training.



2. Implementation Schedule of Certification Rule

Proposed Rule

- Compliance date - 4 years after date effective date of the final rule: 2/2
 - States/territories/Tribes/federal agency must submit revised plans within 2 years
 - EPA has 2 years to review and approve the revised plans
 - At the end of the 4 years, approved plans must be fully implemented
- Currently approved plans remain valid until EPA approves the submitted plans



2. Implementation Schedule

Comments overview

- General opposition to proposed timeframe
 - More time needed for legislative and regulatory changes
 - Burden of separating RUP & GUP programs (if a state chooses)
 - Development of materials
- Proposal does not address
 - Consequences if timeline not met
 - Whether EPA will grant extensions
 - Concerns of primacy



3. Economic Analysis

Costs are being updated to reflect changes to proposal and in response to comments received:

- **Recertification**
- **Texas A&M cost model**
- **Travel costs added**
- **State tracking of certifications**
- **Difficulty of revising state plans**



4. Minimum Age Requirements

Background

- Many states have adopted minimum age requirements for commercial and private applicators
- Final WPS establishes a minimum age of 18 for handlers and early-entry workers, with an exemption for immediate family of agricultural employer.

Current rule

- No minimum age requirement

Proposed rule

- States must set a minimum age
- 18 for certified applicators of RUPs (both commercial and private)
- 18 for non-certified applicators applying RUPs under the supervision of a certified applicator (commercial and private)

4. Minimum Age Certified Applicators

Comments Overview

- Set minimum age of 18 for private and commercial certified applicators
 - Pro:
 - Protects children
 - Youth have higher injury incidence rates
 - Many states already have a minimum age of 18 for commercial applicators – no impact
 - Same age requirement as other federal laws (e.g., DOL)
 - Age of legal responsibility
 - Common sense
 - Con:
 - States should determine (per farm bureaus, USDA, PPC, AAPCO)
 - Legislative changes required
 - Recordkeeping costs
 - Age not a determinant of competency
 - Unintended regulation of GUPs
 - Impacts to family farms, to future generations of farmers/pesticide applicators; to small businesses and seasonal/temporary employees

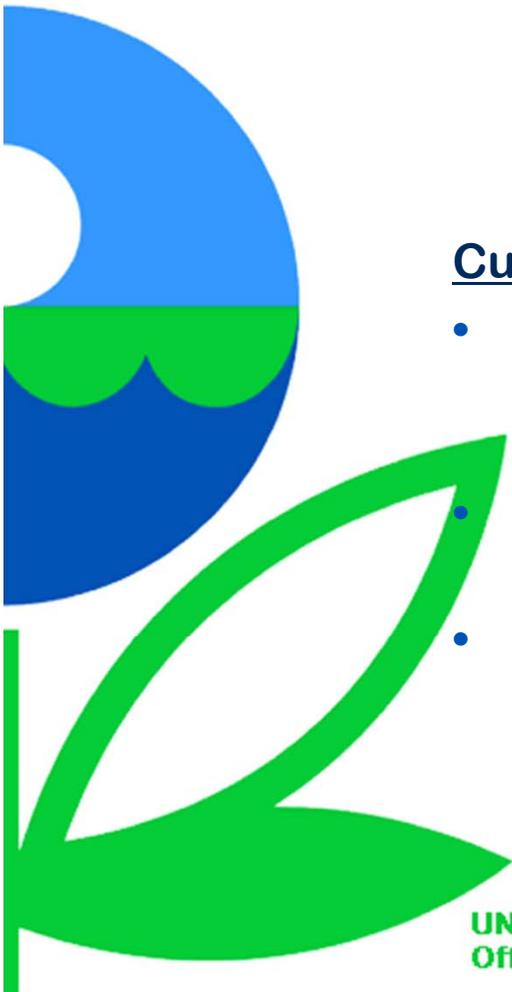
5. Supervision of Noncertified Applicators by Certified Applicators

Background

- 7 U.S.C. 136(e)(4) - FIFRA definition - “Under the direct supervision of a certified applicator” - Unless otherwise prescribed by label, direct supervision is when application is by a competent person acting under instructions/control of a certified applicator who is available if and when needed, even though not physically present at time of application.

Current rule

- Definition of “Under direct supervision” – same as FIFRA’s, and makes certified applicator responsible for actions of supervisee.
- Availability of supervisor directly related to hazard of situation.
- If not required to be physically present (label), supervisor must give verifiable instructions with (1) Detailed guidance for proper application, (2) Provisions for contacting if needed.



5. Supervision of Noncertified Applicators by Certified Applicators

Proposed rule

- Supervisor must be certified in category of application. Supervisor must: Ensure noncertified applicator has met training requirements; Ensure a method of immediate communication; Provide copy of label; Provide specific instructions for each application.

Comments overview in opposition to proposal

- Certification is enough (not category-specific)
- Keep “immediate communication” open and flexible
- Don’t require copy of label: it’s on container
- unmanageable to provide specific instructions
 - let applicator use training plus has access to supervisor.



6. Noncertified Applicators Applying RUPs

Background

- FIFRA definition, “under the direct supervision of a certified applicator,” allows noncertified applicator to use RUPs even if supervisor isn’t present.
- Many states have similar classification: “technician,” apprentice, or trainee.
- Number unknown; Economic Analysis estimates ~950K commercial applicators ~80K under private applicators.

Current rule

- No federal competency requirement



6. Noncertified Applicators Applying RUPs

Proposed rule

- Annual safety training, content similar to WPS handler training.
- Training - orally from written materials or audiovisual.
- Trainer = certified applicator, completed train-the-trainer program, or designated by SLAs.
- Options to training = annual WPS handler training or taking commercial applicator core exam every 3 years.



6. Noncertified Applicators Applying RUPs

Expand Competency of Noncertified Applicators Working Under Direct Supervision of Certified Applicators

Comments Overview

- Pro
 - General support but provide flexibility for states.
 - Use as option to “nonreader” provision.
- Con
 - Leave to states.
 - Burdensome, difficult to enforce/comply.
 - Certify all applicators who use RUPs.



7. General Use Pesticides

Comments Overview

- EPA is focused on risks from RUPs, but most state certification programs do not distinguish between RUP & general use pesticides – for commercial applicators
- Some of changes would create burdens/problems for general use applicators
 - Recertification, private applicators, minimum age
- Too difficult to create a separate system for RUPs and GUPs
- Don't want to exclude non-RUP users – there are benefits to keeping them in the system



8. Private Applicator Certification

Background

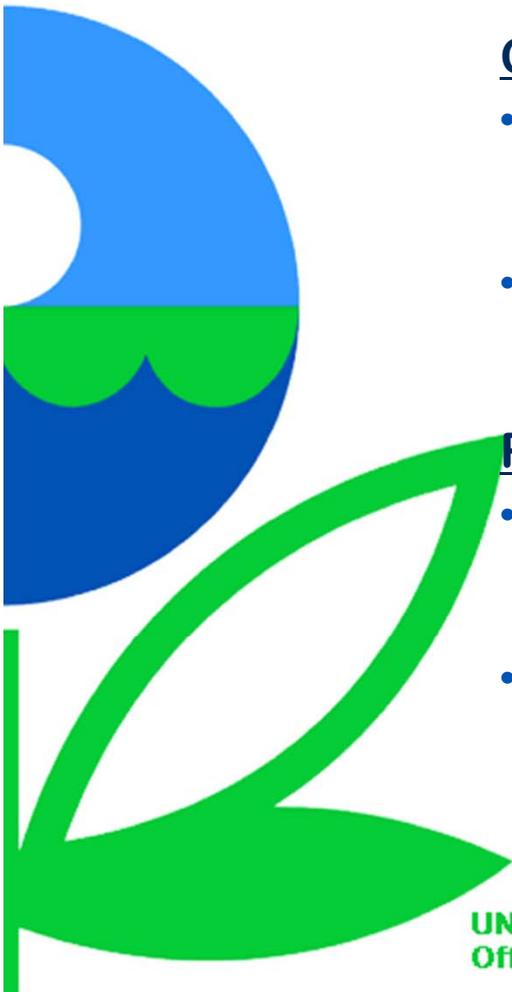
- FIFRA prohibits EPA from requiring an exam for private applicators.

Current rule

- “The competence of the private applicator shall be verified through a written or oral testing procedure, or other method approved as part of a State plan.”
- The current rule has 5 general competency points for private applicator competency.

Proposed rule

- The competence of the private applicator would be verified through passing a written exam OR completion of a training program.
- Exam and training must cover the proposed enhanced competency standards that parallel those for commercial applicators with additional content specific to agriculture (9 major areas, with 40 sub-points)



8. Enhanced Standards for Private Applicator Competency

Comments Overview

- Most states were not opposed to option for training or exam to certify private applicators
- Most were opposed to expanded competency standards
- Supports with following caveats and concerns:
 - (Private) applicators apply a limited number of pesticides on a limited number of sites
 - The potential for pesticide exposure to the applicator, public, or the environment is more limited than for commercial applicators.

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8. Enhanced Standards for Private Applicator Competency

Comments Overview

- Supports with following caveats and concerns:
 - Recommend that each competency is limited in scope to the most pertinent information when developing new knowledge expectations, study guides, and exams for Private Applicators.
 - Costs:
 - additional costs to review and revise, or develop new study guides and exams

There will be economic impacts to growers as the new requirements will likely require that growers either hire a commercial applicator or Private Applicators will need to receive additional training to pass the more extensive exam.

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9. Tribal Certification Plans

Current rule

Three options for applicator certification programs in Indian Country:

1. Utilize state certification to certify applicators
 - Requires concurrence by the state(s) and an appropriate state-tribal agreement
2. Develop and implement a tribal certification plan (requires EPA approval)
3. EPA may administer a federal certification plan for applicators in Indian country, such as EPA's national plan for Indian country

Proposed rule

- Tribes to enter into agreements with EPA instead of the states to recognize the certification of applicators who hold a certificate issued under one or more specific EPA-approved state, tribal or federal agency certification plans.
- Clarify that EPA can include multiple tribes and/or multiple geographic areas of Indian country under one single EPA-administered plan.
- Require tribes that manage their own certification plan to adopt the new standards.



9. Tribal Certification Plans

Rationale:

- Ensures tribes are generally subject to the same certification program standards applicable to states, federal agencies, and EPA-administered programs without the need for state-tribal agreements and little burden on tribes and states
- Enhances the ability of tribal programs to develop and implement certification plans and programs for those tribes that choose to manage their own certification plans
- Provides predictable alternatives for those tribes that do not implement certification plans
- Costs expected to be negligible because it is primarily a clarification of requirements and policy



9. Tribal Certification Plans

Comments were supportive of proposal

- Eliminates need for State-Tribal agreements
- Brings Tribal plans up to current standards
- Costs negligible because changes are a clarification of requirements and policy
- No unreasonable burden on Tribes because they do not require Tribes to implement certification programs
- Provide additional clarifications regarding jurisdiction and the implementation of the Federal plan

Concerns that Tribal consultation was too long ago and not meaningful



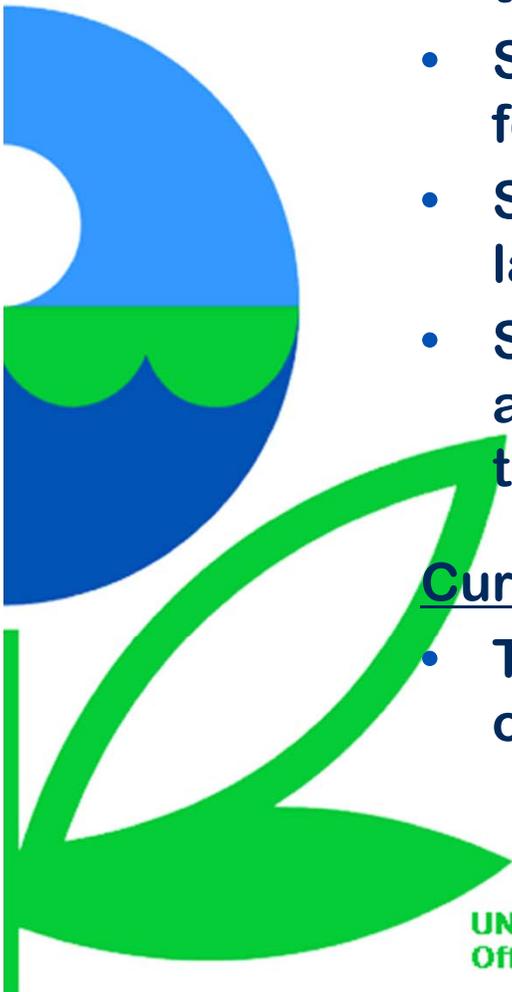
10. Fumigation Categories

Background

- In 2008, the reregistration eligibility decision for soil fumigants required additional training for applicators through the label.
- States recommended that EPA establish a category for this use
- Soil fumigant labels specify training requirements on labels.
- Some states established categories for their applicators; others rely on the registrant-developed trainings that fulfil label requirements.

Current rule

- There is no specific federal category for application of either soil fumigants or non-soil fumigants.



10. Fumigation Categories

Proposed rule

- Require states with these uses to establish separate fumigant categories for private and commercial applicators.
- Concurrent certification required with one of the “pest control” categories.
- Preamble not clear that additional category is only required in states with applicators using those methods.

Comments Overview

- Both support and opposition to a requirement for fumigation categories
- Opposition to concurrent certification in pest control categories.
- Some prefer label risk reduction language to certification category



10. Aerial Category

Background

- At request of states and industry, EPA worked with stakeholders (states, extension, aerial applicators) to develop a manual and exam for aerial application.

Current rule

- There is no specific federal category for application by aerial equipment.

Proposed rule

- Require states with this application method to establish an aerial application category for private and commercial applicators.
- Aerial applicators would need concurrent certification in the applicable pest control category(ies).

10. Aerial Category

Comments Overview

- **Opposition to a requirement for an aerial category - the industry is highly regulated and provides extensive training.**
- **Opposition to concurrent certification in pest control categories – aerial applicators are not making pest management decisions.**
- **Aerial is a job in itself based on job analysis; consider standalone category**

