



New York Farm Bureau • 159 Wolf Road P.O. Box 5330 • Albany, New York 12205 • (518) 436-8495 Fax: (518) 431-5656

January 22, 2016

U.S. Environmental Protection Agency
Office of Pesticide Programs (OPP)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Comments for Submission
Docket ID No. EPA-HQ-OPP-2011-0183

These comments are submitted to the above-referenced docket on behalf of New York Farm Bureau (NYFB), New York's largest general farm organization. Many of our members utilize pesticide products regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and are certified pesticide applicators or utilize the services of commercial pesticide applicators. We appreciate the opportunity to submit comments for the agency's consideration and respectfully request that they be taken into account as the agency refines this proposal.

NYFB acknowledges the EPA's responsibility to ensure that restricted use pesticides (RUP) are handled safely and we support appropriate levels of training and certification of applicators of RUPs. Further, here in New York our members are regulated extensively by the New York State Department of Environmental Conservation (NYSDEC) and under state law and regulation. New York State has a robust framework of training for certification and recertification that not only meets current federal minimum standards, but exceeds them. As such, New York-certified applicators will already meet many of the provisions included in the proposed rule. However, NYFB has concerns that the EPA is going too far in these federal minimum standards and questions the cost and benefits of this proposal.

Although this proposed rule may be well intended, NYFB cannot support it, as proposed, and we urge that the Agency withdraw the proposal and commit to a substantive process of engagement that can produce a proposal that is more reflective of real world conditions. Further, we are concerned that the economic and regulatory costs are understated by the Agency and the benefits of this proposal are overestimated. We expect that even for a state that already has robust certification requirements, there will be a tremendous imposition of costs on multiple stakeholders with little or nothing to show for it.

The proposed rule broadly expands the requirements for individuals to become certified applicators, proposes extensive continuing education requirements (CEUs), codifies the period of

certification, demands changes in New York state laws and regulations relating to new York's certification programs, expands the requirements for certification and limits opportunities by proposing age limits on certain categories of applicators. Based on our interactions with our state regulatory agencies, other crop and commodity organizations, our training partners, and the registrant community, it is clear the revisions the agency is proposing would impose tremendous burdens on farmers, on NYSDEC, and on Cornell University Cooperative Extension (who provides training and resources in New York).

NYFB provides section by section concerns below.

VII. Application-method Specific Certification Categories

NYFB has concerns that the approach proposed by EPA may be unnecessarily burdensome to private applicators and agricultural producers. As noted by EPA, few states currently have such method-specific requirements and although it is important to ensure the adequate training in soil and non-soil fumigation as well as aerial, requirements for aerial application may be well-covered under existing regulations.

As for soil and non-soil fumigation only 10 states have soil and 8 states have non-soil requirements for private applicators. This represents huge changes that has the potential to tax educators and trainers without sufficient justification.

XII. & XIII. Establishing a Minimum Age

EPA has proposed setting the minimum age of 18 for certified applicators, as well as for noncertified applicators working under the direct supervision of certified applicators. In New York for non-certified commercial applicators an apprentice must be at least 16 and a technician at least 17 years of age, however, there is no current age requirement in New York for non-certified private applicators.

For certified commercial applicators, based on the minimum age requirements for apprentices, technicians and private applicators, plus the necessary experience requirements make the default age of a commercial applicator at least 18. For a certified private applicator New York requires that the person must be 17 years old. NYFB is unaware of any issues that would require such a change and believes that it should be up to the states to develop a minimum age standard based on the states qualifications.

XIV. Re-certification Issues

NYFB strongly recommends that EPA removes its proposed 3-year recertification cycle proposed in 40 CFR 171.107(a). This is also an area best left to the states, which have shone demonstrable commitment to assuring recertification is done promptly and responsibly.

Mandating a federal 3-year recertification period will clearly increase burdens on the states and put a strain on educators and trainers.

This shortened time frame for New York state applicators from 5 years to 3 years constitutes a 67% increase in the licensing fees for private applicators. EPA should be aware that the state licensing agency is not always in control of the costs imposed upon the regulated community. In New York, fees are set by the legislature and are charged every time a person gets certified or recertified regardless of timeframe.

Certified applicators in New York have been getting Core and Category recertification training for years, however, NYFB encourages the EPA to take into considerations comments by the American Farm Bureau Federation and the Pesticide Policy Coalition on this subject.

NYFB cannot support the EPA's proposal with regard to the number of recertification credits (CEUs) required. Here, EPA would be requiring increased core training/education requirements; a new set of burdens related to method-specific requirements; higher levels of training; an increase burden of timing of training; and limiting opportunities for older youth to engage in agricultural employments.

While the benefits of these changes are disputable; the costs and burdens are real. Mandating a 3-year certification cycle, and coupling that with specific CEU requirements that must be accomplished within 18 months of recertification, imposes a harsh, inflexible regulatory burden on private applicators. This proposal will entail a demanding schedule of 6 CEUs of instruction to maintain core certification every 3 years and an additional 3CEUs in the application-method specific categories every 3 years as well. These are real world expenses imposed on individuals that are operating their farms year-round; EPA fails to demonstrate how this strict regimented schedule will improve competency.

XV. State Certification Plan Requirements

NYFB disagrees the EPA in its judgement that recordkeeping violation be subject to criminal penalties. Although EPA notes: "EPA has concerns that in the absence of either civil or criminal penalty provisions, a State would not have an adequate range of enforcement options and capabilities to respond appropriate to the wide range of pesticide misuse situations that could arise.

States are the leaders in enforcing FIFRA and state agencies should have full authority to adopt whatever mechanisms they deem suitable in their jurisdiction.

XIX. Definitions

NYFB has concerns with several of the definitions provided by EPA in the rule. First, the definition of "use" as proposed by the EPA states, "Use, as in 'to use a pesticide' means any of

the following (1)(i) arranging for the application of the pesticide.” Under FIFRA it is unlawful for anyone but a certified applicator or someone working under the direct supervision of a certified applicator to use a restricted use pesticide, it would under this proposed regulation be unlawful for anyone who does not meet these requirements to “arrange for the application of the pesticide” since this is now defined as a “use.”

Under this proposed definition, a farmer hiring a commercial agricultural company to spray their crops would have to be certified (or supervised). This is exactly the point of hiring a company to spray, so the farmer can save the step of having to be certified themselves and instead hire a professional. Furthermore, the same would be true for a homeowner, and we do not believe that it is the intent of the EPA to require someone who is hiring a professional to also themselves be certified.

Another definition NYFB has concerns with as proposed is “mishap” and would recommend that the EPA keep the current definition in 40 CFR 171 of “accident”. Under the current rule the definition of “accident” requires that an adverse event occurred, whereas with the new definition of “mishap” on states that an adverse event may have occurred.

Again, NYFB appreciates the opportunity to comment on this proposal. We look forward to the opportunity to work with EPA and NYSDEC in crafting a more reasonable rule that more appropriately ensures the safety of applicators and the public without being overly burdensome on farmers and state regulating agencies without actually improving safety.

Sincerely,

Dean E. Norton
NYFB President