

Comparison of Federal Certification and Training Regulation Changes to Current New York State Requirements

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Clicking the red text in the table will take you to the portion of the Federal Register notice discussing the proposed change. Clicking the blue text in the table will take you to the proposed text of the regulation. Items shaded in yellow will be changes for New York State applicators and/or businesses.

Federal Change Proposed	Revised Federal Regulation Section	Current NY Situation/Requirement		Change
		<i>Private Applicator</i>	<i>Commercial Applicator</i>	
Revise Private Applicator Certification Standards				
A. Enhance Private Applicator Competency Standards				
<ul style="list-style-type: none"> • Label and labeling comprehension - Familiarity with pesticide labels and labeling and their functions, including all of the following: <ul style="list-style-type: none"> ○ The general format and terminology of pesticide labels and labeling. ○ Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling. ○ Understanding that it is a violation of Federal law to use any registered pesticide in a manner inconsistent with its labeling. ○ Understanding when a certified applicator must be physically present at the site of the application based on labeling requirements. ○ Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a certified applicator. ○ Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the application method-specific category appropriate to the type and site of the application and in the predator pest control category for private applicators if applicable. 	40 CFR 171.105(a)	<p>According to Part 325.20(a) minimum requirements for certification are that a private applicator must demonstrate practical knowledge of pest problems and Integrated Pest Management practices associated with agricultural operations according to standards prescribed by the department. They must also demonstrate competence in the use and handling of pesticides based on standards set by the department.</p> <p>Part 325.18 has basic competency info:</p> <p><i>(1) Integrated pest management principles and practices:</i> (i) systematic approach to managing pests which focuses on long-term prevention or suppression with minimal impact on human health, the environment and nontarget organisms; and</p>	<p>NA</p>	<p>None anticipated</p>

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<ul style="list-style-type: none"> ○ Understanding the meaning of product classification as either general or restricted use, and that a product may be unclassified. ○ Understanding and complying with product-specific notification requirements. ● Safety - Measures to avoid or minimize adverse health effects, including all of the following: <ul style="list-style-type: none"> ○ Understanding the terms “acute toxicity” and “chronic toxicity,” as well as the long-term effects of pesticides. ○ Understanding that a pesticide’s risk is a function of exposure and the pesticide’s toxicity. ○ Recognition of likely ways in which dermal, inhalation and oral exposure may occur. ○ Common types and causes of pesticide mishaps. ○ Precautions to prevent injury to applicators and other individuals in or near treated areas. ○ Need for, and proper use of, protective clothing and personal protective equipment. ○ Symptoms of pesticide poisoning. ○ First aid and other procedures to be followed in case of a pesticide mishap. ○ Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers. ● Environment - The potential environmental consequences of the use and misuse of pesticides, including the influence of the following: <ul style="list-style-type: none"> ○ Weather and other climatic conditions. ○ Types of terrain, soil, or other substrate. 		<ul style="list-style-type: none"> (ii) incorporate all reasonable measures to prevent pest problems by properly identifying pests, monitoring population dynamics, and utilizing cultural, physical, biological or chemical pest population control methods to reduce pests to acceptable levels. <p>(2) Label and labeling comprehension:</p> <ul style="list-style-type: none"> (i) the general format and terminology of pesticide labels and labeling; (ii) the understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels; (iii) classification of the product, general or restricted; and (iv) necessity for use consistent with the label. <p>(3) Safety. Factors including:</p> <ul style="list-style-type: none"> (i) pesticide toxicity and hazard to man and common exposure routes; (ii) common types and causes of pesticide accidents; (iii) precautions necessary to guard against injury to applicators and other individuals in or near treated areas; (iv) need for and use of protective clothing and equipment; (v) symptoms of pesticide poisoning; 		

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<ul style="list-style-type: none"> ○ Presence of fish, wildlife, and other non-target organisms. ○ Presence of pollinators. ○ Drainage patterns. ● Pests - The proper identification and effective control of pests, including all of the following: <ul style="list-style-type: none"> ○ Common features of pest organisms and characteristics of damage needed for pest recognition. ○ Recognition of relevant pests. ○ Pest development, biology, and behavior as it may be relevant to problem identification and control. ● Pesticides - Characteristics of pesticides, including all of the following: <ul style="list-style-type: none"> ○ Types of pesticides. ○ Types of formulations. ○ Compatibility, synergism, persistence, and animal and plant toxicity of the formulations. ○ Hazards and residues associated with use. ○ Factors that influence effectiveness or lead to problems such as pesticide resistance. ○ Dilution procedures. ● Equipment - Application equipment, including all of the following: <ul style="list-style-type: none"> ○ Types of equipment and advantages and limitations of each type. ○ Uses, maintenance, and calibration procedures. ● Application methods - Selecting appropriate application methods, including all of the following: <ul style="list-style-type: none"> ○ Methods used to apply various formulations of pesticides, solutions, and gases. ○ Knowledge of which application method to use in a given situation and when certification in 		<p>(vi) first aid and other procedures to be followed in case of a pesticide accident; and</p> <p>(vii) proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.</p> <p>(4) Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:</p> <p>(i) weather and other climatic conditions;</p> <p>(ii) types of terrain, soil or other substrate;</p> <p>(iii) presence of fish, wildlife and other non-target organisms; and</p> <p>(iv) drainage patterns.</p> <p>(5) Pests. Factors such as:</p> <p>(i) common features of pest organisms and characteristics of damage needed for pest recognition;</p> <p>(ii) recognition of relevant pests; and</p> <p>(iii) pest development and biology as it may be relevant to problem identification and control.</p> <p>(6) Pesticides. Factors such as:</p> <p>(i) types of pesticides;</p> <p>(ii) types of formulations;</p>		

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<p>an application method-specific category is required in accordance with paragraph (c) of this section.</p> <ul style="list-style-type: none"> ○ Relationship of application and placement of pesticides to proper use, unnecessary or ineffective use, and misuse. ○ Prevention of drift and pesticide loss into the environment. ● Laws and regs - Knowledge of all applicable State, Tribal, and Federal laws and regulations, including understanding and complying with the Worker Protection Standard in 40 CFR part 170. ● Responsibilities for supervisors of noncertified applicators - Certified applicator responsibilities related to supervision of noncertified applicators, including all of the following: <ul style="list-style-type: none"> ○ Understanding and complying with requirements in § 171.201 of this chapter for certified private applicators who supervise noncertified applicators using restricted use pesticides. ○ Providing use-specific instructions to noncertified applicators using restricted use pesticides under the direct supervision of a certified applicator. ○ Explaining appropriate State, Tribal, and Federal laws and regulations to noncertified applicators working under the direct supervision of a certified applicator. ● Stewardship - Understanding the importance of all of the following: <ul style="list-style-type: none"> ○ Maintaining chemical security for restricted-use pesticides. ○ How to communicate information about pesticide exposures and risks with agricultural 		<ul style="list-style-type: none"> (iii) compatibility, synergism, persistence and animal and plant toxicity of the formulations; (iv) hazards and residues associated with use; (v) factors which influence effectiveness or lead to such problems as resistance to pesticides; and (vi) dilution procedures. <p>(7) Equipment. Factors including:</p> <ul style="list-style-type: none"> (i) types of equipment and advantages and limitations of each type; and (ii) uses, maintenance and calibration. <p>(8) Application techniques. Factors including:</p> <ul style="list-style-type: none"> (i) methods of procedure used to apply various formulations of pesticides, solution and gases, together with a knowledge of which technique of application to use in a given situation; (ii) relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and (iii) prevention of drift and pesticide loss into the environment. <p>(9) Laws and regulations. Applicable State and Federal laws and regulations.</p>		

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<p>workers and handlers and other relevant persons.</p> <ul style="list-style-type: none"> • Agricultural pest control - Practical knowledge of pest control applications to agricultural commodities including all of the following: <ul style="list-style-type: none"> ○ Specific pests of agricultural commodities. ○ How to avoid contamination of ground and surface waters. ○ Understanding pre-harvest and restricted-entry intervals and entry-restricted periods and areas. ○ Understanding specific pesticide toxicity and residue potential when pesticides are applied to animal or animal product agricultural commodities. ○ Relative hazards associated with using pesticides on animals or animal products based on formulation, application technique, age of animal, stress, and extent of treatment. 				
B. Strengthen Private Applicator Certification Requirements				
Required to complete a training program approved by the certifying authority or pass a written exam.	40 CFR 171.105(e)	Required to pass a written exam.	NA	None
C. Eliminate Non-Reader Certification for Private Applicators				
Eliminate non-reader certification for private applicators. (<i>Note: Current federal regulation (40CFR171.5(b)(1)) says that if a person at the time of testing for certification is unable to read the label, the state can use a testing procedure approved by the EPA Administrator that adequately demonstrates competency.</i>)		Non-reader certification doesn't appear as an option in state law or regs. However, Part 325.38 allows for a special permit to be issued allowing an uncertified applicator who cannot read English to use a particular RUP for a period of time. This would apply to both private and commercial applicators.		None?
Establish Application Method-Specific Certification Categories for Private and Commercial Applicators				
<p>Establish three application method-specific categories for private and commercial applicators:</p> <ul style="list-style-type: none"> • Soil fumigation • Non-soil fumigation • Aerial 	<p>Commercial: 40 CFR 171.101(b)</p> <p>Private: 40 CFR 171.105(c)</p>	Aerial is covered under the regulatory definition for Cat 11-aerial pilot. Soil and non-soil fumigation are currently folded into the private category/subcategory.	NY currently has categories for these (Cat. 1D -soil and ag fumigation, 7B – Fumigation, and 11 – Aerial Pilot.)	

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Commercial applicators in <i>soil fumigation</i> would need to demonstrate competency via written exam and hold concurrent certification in each of the pest control categories they wish to work in. (i.e., ag plant, turf and ornamental)		NA	For 1D – fumigation of soil and ag commodities, must have concurrent certification in 1A – Ag. Plant	No change
Commercial applicators in <i>non-soil fumigation</i> would need to demonstrate competency via written exam and hold concurrent certification in each of the pest control categories they wish to work in. (i.e., ag plant, turf and ornamental)		NA	For 7b – fumigation, no concurrent category required	Would require 7b applicators to be concurrently certified in an additional pest control category.
Commercial applicators who make <i>aerial applications</i> of RUPs would need to demonstrate competency via written exam and hold concurrent certification in each of the pest control categories they wish to conduct the aerial application (i.e., ag plant, turf and ornamental).		NA	If only making application, this is a stand-alone category. If making application AND providing services associated with pest management, then need concurrent certification in the appropriate category is required (Part 325.16(k)).	Would require all aerial applicators to hold concurrent certification in a pest control category.
Private applicators in <i>non-soil fumigation</i> would need to demonstrate competency by passing a written exam or completing a training program and also need valid private applicator certification		Covered under private applicator certification.	NA	Would require creation of private non-soil fumigation category. Also may require additional training manual for this category.
Private applicators in <i>soil fumigation</i> would need to demonstrate competency by passing a written exam or completing a training program and also need valid private applicator certification		Covered under private category certification exam. Training is also required by fumigant labels.	NA	Would require creation of exam for private soil fumigation category. Also may would require additional training manual for this category.
Private applicators who make <i>aerial applications</i> would need to demonstrate competency by passing a written exam or completing a training program and also need valid private applicator certification		If only making application, this is a stand-alone category. It's not quite clear if a private applicator would need to have concurrent certification. Part 325.16(k) says that if aerial applicator provides	NA	None

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		services associated with pest management, then concurrent certification is needed. Private applicators do not provide this service except possibly for themselves.		
Establish Predator Control Categories for Commercial and Private Applicator Certification				
Establish predator control category for private and commercial applicators, codifying the current standards of competency outlined in the specific registration decisions for two specific predatory control products (sodium fluoroacetate and sodium cyanide). Applicators must comply with label-listed requirements.	Commercial: 40 CFR 171.101(a)(10) Private: 40 CFR 171.105(b)	No such category exists.	No such category exists.	None currently. Category would need to be added if NY registers products containing any of these active ingredients.
Establish Requirement to Ensure Security and Effectiveness of Exam and Training Administration				
Closed book initial and recertification exams	Initial Commercial Certification: 40 CFR 171.103(a) Initial Private certification: 40 CFR 171.105(e)	Core exam is closed book. Category is open book.		Would require moving to closed-book exams for category exams. Would also require writing a different type of training manual that's geared more towards closed-book exams.
Proctored exams.	Recertification administration: 40 CFR 171.107(b)	Currently done.		
Photo identification of each test taker/training program participant must be provided and verified.		Currently required for in-person training and certification exams. Not required for online or distance education participants.		Would require method for online/distance education program participants to present photo identification and have it verified by program sponsor/administrator.
Proctors must: <ul style="list-style-type: none"> Verify the identity and age of persons taking the exam by checking identification as required under the proposed rule and have examinees sign an exam roster. 		Currently done.		None

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<ul style="list-style-type: none"> • Monitor examinees throughout the exam period. • Instruct examinees in exam procedures before beginning the exam. • Keep exams secure before, during, and after the exam period. • Allow only examinees to access the exam and allow such access only in the presence of the proctor. • Ensure that examinees have no verbal or non-verbal communication with anyone other than the proctor during the exam period. • Ensure that no copies of the exam or any associated reference materials are made and/or retained by examinees. • Ensure that examinees do not have access to reference materials other than those that are approved by the certifying authority and provided by the proctor. • Review reference materials provided to examinees when the exam is complete, to ensure that no portion of the reference material has been removed or destroyed. • Report to the certifying authority any exam administration inconsistencies or irregularities, including but not limited to cheating, use of unauthorized materials, and attempts to copy or retain the exam. • Comply with any other instructions required by the certifying authority related to exam administration. 				
Proctor's prohibited from taking certification exam at site where they're proctoring.		Unknown.		?
Test/training administrators verify identity of persons seeking initial certification and recertification		Must show ID for both initial certification and recertification.		None

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Strengthen Standard for Noncertified Applicators Working Under Direct Supervision of Certified Applicators				
<i>A. Enhance Competence of Noncertified Applicators Working Under the Direct Supervision of a Certified Applicator</i>				
<p>Annual training on:</p> <ul style="list-style-type: none"> • Format and meaning of information contained on pesticide labels and in labeling, including safety information, such as precautionary statements about human health hazards, and hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization. • Routes by which pesticides can enter the body. • Signs and symptoms of common types of pesticide poisoning. • Emergency first aid for pesticide injuries or poisonings. • How to obtain emergency medical care. • Routine and emergency decontamination procedures. • Need for, and appropriate use of, personal protective equipment. • Prevention, recognition, and first aid treatment of heat-related illness associated with the use of personal protective equipment. • Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup. • Environmental concerns such as drift, runoff, and wildlife hazards. • Warnings against taking pesticides or pesticide containers home. • Washing and changing work clothes before physical contact with family. • Washing work clothes separately from the family's clothes before wearing them again. 	<p>40 CFR 171.201(c) and (d)</p>	<p>Part 325.6 addresses training requirements for direct supervision. The regulation has a non-exclusive list of topics the training should cover. Regulation also requires that certified applicator or the owner or manager of the business provide relevant safety information and restricted entry intervals. Regulations also specify that training be done "prior to any pesticide application."</p>	<ul style="list-style-type: none"> • Same regulation for private applicators applies to commercial applicators. • Apprentice and technician training content in Part 325.18 appears to meet what's being proposed. 	<ul style="list-style-type: none"> • Annual training of noncertified applicators will be required. • Need to assure that all training points specified in federal rule are included in training.

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<ul style="list-style-type: none"> How to report suspected pesticide illness to the appropriate state agency. 				
Alternative training allowed: <ul style="list-style-type: none"> WPS trained handler Passed core exam for commercial applicators 		No current provisions for this option. Training is to be provided by certified applicator according to regulations. (Part 325.6(a))		None
Require retraining or retesting: <ul style="list-style-type: none"> If qualified through training program or via WPS handler training, require annual training. If took commercial core exam and passed, must retest every 3 years. 		No current provisions for this option. Training is to be provided by certified applicator according to regulations. (Part 325.6(a)) Regulations also require training to be provided prior to any pesticide application.		None
<i>B. Establish Qualifications for Training Providers</i>				
Require that noncertified applicator training be provided by a certified applicator, a state-designated trainer of certified applicators, or a person who has completed a pesticide safety train-the-trainer program under the WPS. (Note that the proposal defines a state-designated trainer as mainly Extension educators.)	40 CFR 171.201(d)(2)	Part 325.6(a) states that the certified applicator must provide safety training to individuals under the certified applicator's direct supervision.		None
<i>C. Establish Qualifications for Certified Applicators Supervising Noncertified Applicators</i>				
Certified applicators who supervise noncertified applicators must be certified in the category they're supervising.	40 CFR 171.201(b)	Currently required in New York State. (Part 325.1(L))		None
Certified applicators must ensure that noncertified applicators under their direct supervision have satisfied one of the qualification methods allowed (training, WPS, or core exam)		Certified applicator is required to provide training prior to any pesticide application.		None
Certified applicator must provide a copy of the label and labeling to each noncertified applicator for each supervised application. The noncertified applicator must have the label/labeling with them at the time of application.		Part 325.6 says that relevant safety information, REIs be provided. No requirement to provide the label. Part 325.2 says that any certified applicator, certified technician, or commercial apprentice must have a copy of label with them.		Noncertified applicator working under certified private applicator will need to be provided with a copy of the pesticide label and have it with them during the application.

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Certified applicator must ensure means of immediate communication are available.		<p>On-site direct supervision is required when a private applicator supervises a noncertified applicator applying federally restricted-use pesticides (Part 325.7(2)ii). On-site direct supervision requires that the certified applicator be physically present at the application site and within voice contact of the person being supervised at the time of application.</p> <p>No direct supervision is required for use of general-use pesticides in private applications. There are no specific regulations governing communication for use of general-use pesticides.</p>	<p>On-site direct supervision required when commercial technician:</p> <ul style="list-style-type: none"> engages in subsurface ground application of termiticides, surface application of termiticides to exposed soil in basements and crawl spaces, and placement of termiticide in voids of masonry foundations. Fumigants except fumigants classified as general use applied to in-place utility poles. Apply pesticides that require on-site supervision. Apply aquatic pesticides to any surface waters of the state except applications of microbial pesticides to control aquatic pests as described in Part 325. <p>On-site direct supervision is required for apprentice:</p> <ul style="list-style-type: none"> Applies federally restricted-use pesticides. applies aquatic pesticides to surface waters of the state except when applying aquatic pesticides under authority of special purchase permit or apply aquatic pesticides to 	Because “immediate communication” is described to be either voice contact (if the supervising applicator is on-site) or via cell phone or two-way radio, the 30 minute window for being able to contact the supervising applicator would not be allowed. Applicators and supervising applicators would have to have cell phones, two-way radios, or some other means of “instant” communication available.

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			<p>temporary pools of water which have no outlets.</p> <ul style="list-style-type: none"> • applies pesticides that require on-site supervision. • applied pesticides within or on the premises of licensed day care facilities, elementary and secondary schools and hospitals. <p>When on-site direct supervision is required, the certified applicator must be present at the application site and within voice contact of the individual being supervised.</p> <p>Off-site direct supervision is allowed when apprentice uses pesticides that do not require onsite supervision as listed in Part 325 or when a technician applies restricted-use pesticides other than those requiring on-site supervision or those applied by aircraft.</p> <p>For off-site direct supervision, the commercial applicator must ensure that the apprentice or technician has a means to contact and is able to contact the supervising certified applicator within 30 minutes and that a technician applying pesticides by</p>	

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			aircraft maintains radio contact with the certified applicator.	
Certified applicator must provide specific instructions related to each application, including site-specific precautions and how to use the equipment.			Part 325.6 requires training prior to any pesticide application and includes, but not limited to, topics such as site-typical detailed guidance for pesticide use, pesticide safety, use of PPE, including selection of appropriate respirators, and restricted-entry intervals.	None
Certified applicators must explain and comply with all label restrictions.			Part 325.6 says that training shall include, but is not limited to, site-typical detailed guidance for pesticide use, pesticide safety, use of PPE including selection of appropriate respirators, and restricted entry intervals. Presumably explaining all label restrictions would fall under this.	Applicators will need to explain the label.
Before any noncertified applicator uses any equipment for mixing, loading, transferring, or applying pesticides, the certified applicator must ensure the noncertified applicator has been instructed in the safe operation of the equipment within the past 12 months.			No specific state regulation requiring training on specific equipment to be used. However, Part 325.6 says that training shall include, but is not limited to, site-typical detailed guidance for pesticide use, pesticide safety, use of PPE including selection of appropriate respirators, and restricted entry intervals which probably would include training on using specific equipment. Part 325.18 should also presumably include this.	Certified applicator has to confirm the training.
Certified applicator must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and damaged parts. Certified applicator must ensure that damaged equipment is repaired or replaced prior to use.			Currently no requirement for this.	Certified applicators have to inspect and repair damaged/defective equipment.
Where pesticide label requires PPE be worn for use activities, the certified applicator must ensure that any noncertified applicator using the RUP has the label-required PPE, that it is worn and used correctly, and that the PPE is clean and in proper operating condition.			Part 325.6(b) already addresses this.	None
Expand Commercial Applicator Recordkeeping to Include Noncertified Applicator Training				
Commercial applicators required to keep training records for noncertified applicators to include: <ul style="list-style-type: none"> • Trained noncertified applicator's printed Name and signature. • Date of training. 	40 CFR 171.201(e)	NA	Part 325.10(c) provides for documentation of apprentice training including name and address of apprentice, date(s) of instruction or observation;	None except for requiring signature on document.

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<ul style="list-style-type: none"> Name of person providing training. Supervising commercial applicator's name. 			content of the training and certification category; instructor's name and certification number; and an evaluation concluding the apprentice is competent to apply pesticides. Record must be retained for 3 years.	
Establish Minimum Age for Certified Applicators				
Establish minimum age of 18 to become a certified commercial or private applicator	Commercial applicator: 40 CFR 171.103(a)(1) Private applicator: 40 CFR 171.105(d)	Must be 17 years old.	No specific minimum age is in the regulations for fully certified commercial applicator. However, when looking at how one can become a certified commercial applicator, the minimum age requirements for apprentices, technicians, and private applicators plus the necessary experience requirements makes the default age of a certified commercial applicator at least 18.	Private applicator minimum age will become 18.
Establish Minimum Age for Noncertified Applicators Working Under the Direct Supervision of a Certified Applicator				
Minimum of 18 years old to be a noncertified applicator working under the direct supervision of a certified applicator.	40 CFR 171.201(b)(5)	No current requirement	An apprentice must be at least 16 and technicians at least 17.	All noncertified applicators would need to be at least 18 years old.
Establish a National Certification Period and Standards for Recertification				
A. National Recertification Period				
Maximum 3 year certification period.	40 CFR 171.107(a)	5 years	Currently meets or exceeds this requirement as in the case of 3a only and 3b only.	Private applicator certification cycle will become 3 years.
B. Recertification Requirements				
Private applicators must earn at least 6 CEUs covering <i>general competency standards</i> (40 CFR 171.105(a)) every 3 years	40 CFR 171.107(b)	For <i>private ag plant</i> , currently require 10 credits to recertify every 5 years with 25% (2.5 credits) in the sub-category of certification and the	NA	Need to assure that at least 6 credits are earned within 3 year certification cycle. Content of NY training

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		balance (7.5 credits) in any of the ag. plant sub-categories or in core. For <i>private ag animal</i> and <i>private aquatic</i> , currently require 8 credits every 5 years; 25% (2 credits) in the category with the balance (8 credits) in the category or in core.		appears to fit that proposed by EPA.
Private applicators must earn at least 3 CEUs in each of the <i>application-specific categories</i> (soil fumigation, non-soil fumigation, aerial, predator) every 3 years.		Currently soil and commodity fumigation is included in the particular private sub-categories and would be included in the 2.5 credits required for the general ag plant category.	NA	Would require adding new application specific categories along with specific recertification requirements for each one.
Commercial applicator must earn at least 6 CEUs in <i>core area</i> every 3 years.		NA	There is no requirement that a commercial applicator earn a set number of core credits per certification cycle. Core credits can make up all, part, or none of the remaining credits earned once minimum category-specific credits are met.	Need to meet minimum number of core credits required by federal requirement. The 3A only and 3B only group would need to have core credits pro-rated for annual recertification.
Commercial applicators must earn at least 6 CEUs in each specific category (pest control and application method-specific) every 3 years.		NA	25% of total recertification credits needed must be in the specific category of certification. Required category-specific credits range from .75 credits (for RUP sales category) to 3 credits (for 7A –Structural Rodent and 7F-Food Processing). No commercial category currently mandates a minimum of 6 category-specific credits.	Applicators would need to have 6 credits for each pest control and application method-specific category they're certified in.

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Allow applicators to earn CEUs in a program administered by or approved by the certifying state, tribal, or federal agency.		Currently done.		None
One CEU = 50 minutes of active training time.		1 hour = one credit		None
Require that half of CEUs be earned in the 18 months prior to certification expiration.		Must earn credits in two different calendar years.	No timeframe specified.	Private and commercial applicators would need to earn half their credits in the 18 months prior to certification expiration. (Annual recertification for 3A only and 3B only is actually more restrictive and should comply with this rule.)
Allow certifying authorities to require applicators to pass exams relevant to their categories of certification in order to be recertified.		This is currently an option.		None.
Revise State Certification Plan Requirements				
State plans must conform to new standards.	40 CFR 171.303(a) and (b)			
Required state program reporting changes	40 CFR 171.303(c)			
State must have civil and criminal penalty authority	40 CFR 171.303(b)(6)(iii)			
Revisions to commercial applicator recordkeeping to include: <ul style="list-style-type: none"> Name and address of person for whom the pesticide was applied. Location of the application. Size of the area treated. Crop, commodity, stored product, or site to which the pesticide was applied. The time and date of the application. The brand or product name of the pesticide applied. 	40 CFR 171.303(b)(6)(vi)	NA	ECL 33-1205 requires that commercial applicator records include: <ul style="list-style-type: none"> EPA Reg. No. Product name. Quantity of each pesticide used. Date of application. Location of application by address. Rates. 	In addition to NY requirements, applicators would to include the following elements: <ul style="list-style-type: none"> Name and address for whom application was made. Size of area treated. Crop, commodity, stored product, or site to which the pesticide was applied.

Federal Change Proposed	Revised Federal Regulation Section	Current NY Situation/Requirement		Change
		Private Applicator	Commercial Applicator	
<ul style="list-style-type: none"> The EPA Reg. No. of the pesticide. The total amount of the pesticide applied. The name and certification number of the certified applicator making or supervising the application and, if applicable, the name of any noncertified applicator(s) making the application under the direct supervision of the certified applicator. Records related to the supervision of noncertified applicators working under the direct supervision of a certified applicator (training records) <p>Records must be kept for at least 2 years.</p>			<ul style="list-style-type: none"> Method of application. Target organism. <p>Records must be retained for at least 3 years.</p>	<ul style="list-style-type: none"> Time of application. The name and certification number of the certified applicator making or supervising the application and, if applicable, the name of any noncertified applicator(s) making the application under the direct supervision of the certified applicator. Noncertified applicator training records.
<p>RUP retail dealer must keep and maintain records at each dealership of each transaction where a RUP is distributed or sold by that dealership to any person. (Does not include transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities.) Records need to be retained for at least 2 years. Records must include:</p> <ul style="list-style-type: none"> Name and address of the residence or principal place of business of each person to whom the RUP was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified applicator to whom the RUP was distributed or sold for use by a certified applicator. The applicator's unique certification number on the certification document presented to the dealer evidencing the valid certification of the certified applicator authorized to purchase the RUP; the State, Tribe or Federal agency that issued the certification document; the expiration date of the 	<p>40 CFR 171.303(b)(6)(vii)</p>	<p>NA</p>	<p>Part 326.10 (b)(3)(i) requires every commercial permit holder to keep a separate sales invoice record for each purchase permit holder (or certification identification card holder) on an annual basis. These records must be retained by the commercial permit holder and kept for a minimum of three years.</p> <p>ECL §33-1205(2)(a) mandates that all commercial permit holders who sell or offer for sale restricted use pesticides to private applicators issue a record to the private applicator of each sale of a restricted use pesticide or a general use pesticide used in agricultural crop production to</p>	<ul style="list-style-type: none"> Retailers would need to include name and address for who picked up or purchased RUP. Retailers would need to capture applicator certification number, who issued it, the expiration date, and categories certified in.

Federal Change Proposed	Revised Federal Regulation Section	Current NY Situation/Requirement		Change
		Private Applicator	Commercial Applicator	
<p>certified applicator's certification; and the categories in which the certified applicator is certified.</p> <ul style="list-style-type: none"> • The product name and EPA registration number of the RUP(s) distributed or sold in the transaction, and the State special local need registration number on the label of the RUP if applicable. • The quantity of the pesticide(s) distributed or sold in the transaction. • The date of the transaction. 			<p>such applicator. The record must include:</p> <ul style="list-style-type: none"> • EPA registration number, • product name of the pesticide purchased, • quantity of the pesticide purchased, • date purchased and • location of intended application by address, including five-digit zip code, or if the address is unavailable, then by town or city, including five-digit zip code, if the location of intended application differs from the billing address that appears on the record. <p>Those commercial permit holders that are also importers, manufacturers or compounders are required by ECL §33-1207(1) to maintain records of all sales within the state during the preceding year of each restricted use pesticide product which he or she has imported, manufactured or compounded. This record of each restricted use pesticide must include: (a) EPA registration number; (b) container size; and (c) number of containers sold to New York purchasers. Such records are to be maintained for a</p>	

Federal Change Proposed	Revised Federal Regulation Section	Current NY Situation/Requirement		Change
		Private Applicator	Commercial Applicator	
			<p>period of not less than three years.</p> <p>Commercial permit holders are also required by ECL §33-0901(5) to maintain and make available, for at least two years, accurate and detailed records accounting for all restricted use pesticides acquired and disposed of including, but not limited to dates, names and addresses of all suppliers and the quantities acquired from each, and the names, addresses, permit numbers or certification identification card numbers of all purchasers, and the quantities purchased by each.</p> <p>Part 326.3(f) requires that a commercial permit holder maintain all records pertaining to the acquisition, sale or disposal of restricted use pesticides for a period of two years and make available said records for inspection by the commissioner. Such records shall be kept in a manner and on such forms as the commissioner may prescribe.</p>	

Federal Change Proposed	Revised Federal Regulation Section	Current NY Situation/Requirement		Change
		Private Applicator	Commercial Applicator	
<p>Certification credentials or documents verifying certification shall have the following:</p> <ul style="list-style-type: none"> • The full name of the certified applicator. • The certification, license, or credential number of the certified applicator. • The type of certification (private or commercial). • The category(ies), including any application method-specific category(ies) and subcategories of certification, in which the applicator is certified, as applicable. • The expiration date of the certification. • A statement that the certification is based on a certification issued by another State, Tribe or Federal agency, if applicable, and the identity of that State, Tribe or Federal agency. 	40 CFR 171.303(a)(6)	<p>Current ID has:</p> <ul style="list-style-type: none"> • Full name • Certification number • Type of certification (private/commercial) • Categories/subcategories (by number) • Expiration date. 		<p>New rule does not define whether or not the actual name of the category needs to be on the document or if category number suffices. If name of category is required, credentials will need to be modified to account for this.</p>
<p>State plans will be required to specify whether the state would certify applicators based, in whole or in part, on the applicator having been certified by another state, tribe, or federal agency.</p>	40 CFR 171.303(a)(7)			
<p>Revise state plan maintenance, modification, and withdrawal requirements to reflect current policy and guidance issued by EPA in 2006 (Interim National Program Guidance for EPA Regional Offices on EPA’s Pesticide Applicator Certification Program (40CFR Part 171). July 2006).</p>	40 CFR 171.309			
Establish Provision for Review and Approval of Federal Agency Plans				
<p>Delete section on Government Agency Plans (GAP) and to codify EPA’s 1977 policy on review and approval of federal agency plans.</p>	40 CFR 171.305			
Clarify Options for Establishing a Certification Program in Indian Country				
<p>Revise mechanisms for establishing applicator certification programs in Indian country by:</p> <ul style="list-style-type: none"> • Eliminating the requirement for tribes to enter into cooperative agreements with states. Allow option 	40 CFR 171.307			

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<p>to enter into agreements with EPA regional offices to establish certification programs in Indian country.</p> <ul style="list-style-type: none"> • Allow multiple tribes and/or geographic areas under one single EPA-administered plan. • Require those tribes choosing to manage their own certification plans to adopt the new standards proposed for state and federal agency certification plans regarding initial certification and recertification of private and commercial applicators and the training and supervision of noncertified applicators. • Eliminate current requirement for states to include in their state certification plan references to any agreements with tribes for recognizing the states' certificates. • Include provisions relating to exercising of criminal enforcement authority. 				
Revise Provisions for EPA-Administered Plans				
Update requirements for EPA-administered plans to incorporate the proposed changes being made for state plans.	40 CFR 171.311			
Revise Definitions and Restructure 40 CFR 171				
A. Improved Definitions				
	40 CFR 171.3			
<i>Revised Definitions</i>				
compatibility - the extent to which a pesticide can be combined with other chemicals without causing undesirable results.		No definition in state law or reg.		
competent - having the practical knowledge, skills, experience, and judgment necessary to perform functions associated with restricted use pesticide application without causing unreasonable adverse effects, where the nature and degree of competency		Part 325.1(w) – properly qualified to perform functions associated with pesticide use		

Federal Change Proposed	Revised Federal Regulation Section	Current NY Situation/Requirement		Change
		Private Applicator	Commercial Applicator	
required relate directly to the nature of the activity and the degree of independent responsibility.				
dealership - any establishment owned or operated by a restricted use pesticide retail dealer where restricted use pesticides are distributed or sold.		No definition in state law or regulation.		
non-target organism - any plant, animal or other organism other than the target pests which a pesticide is intended to affect.		Part 325.1(ar) – a plant or animal other than the one the pesticide is meant to control		
ornamental - trees, shrubs, flowers, and other plantings intended primarily for aesthetic purposes in and around habitations, buildings and surrounding grounds, including, but not limited to, residences, parks, streets, and commercial, industrial, and institutional buildings.		Part 325.1(as) – trees, shrubs, and other plantings, grown primarily for beauty in and around habitations, generally, but not necessarily located in urban and suburban areas, including residences, parks, streets, retail outlets, industrial and institutional buildings.		
principal place of business - the principal location, either residence or office, where a person conducts a business of applying restricted use pesticides. A person who applies restricted use pesticides in more than one State or area of Indian country may designate a location within a State or area of Indian country as its principal place of business for that State or area of Indian country.		No definition in state law or regulation.		
regulated pest - a particular species of pest specifically subject to Tribal, State or Federal regulatory restrictions, regulations, or control procedures intended to protect the hosts, man and/or the environment.		No definition in state law or regulation.		
restricted use pesticide - a pesticide that is classified for restricted use under the provisions of FIFRA section 3(d).		ECL 33-101(42) – a pesticide as defined in this article and determined as provided in section 33-0303: a. Which (1) either (a) persists in the environment, or (b) accumulates as either the pesticide per se, a pesticide metabolite, or a pesticide degradation product in plant or animal tissue or product, and is not excreted or eliminated within a reasonable period of time, and which may be transferred to other forms of life; and (2) which by virtue of such persistence or accumulation		

Federal Change Proposed	Revised Federal Regulation Section	Current NY Situation/Requirement		Change
		Private Applicator	Commercial Applicator	
		creates a present or future risk of harmful effects on any organism other than the target organisms; or b. Which the commissioner finds is so hazardous to man or other forms of life that restrictions on its sale, purchase, use, or possession are in the public interest.		
		Part 326.1(2) – any pesticide listed in section 326.2 of this Part according to the criteria of Environmental Conservation Law, section 33-0101(42), or any pesticide whose labeling bears the statement “Restricted Use Pesticide.” Part 325.1(bf) – a pesticide that is classified for restricted use under the provisions of article 33 of the Environmental Conservation Law or under section 3(d)(1)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.		
Restricted use pesticide retail dealer - any person who distributes or sells restricted use pesticides to any person, excluding transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities.		No definition in state law or regulations.		
toxicity - the property of a pesticide that refers to the degree to which the pesticide and its related derivative compounds are able to cause an adverse physiological effect on an organism as a result of exposure.		No definition in state law or regulation.		
New Definitions				
application - the dispersal of a pesticide on, in, at, or around a target site.		ECL 33-101(8) – application of pesticide – any application of pesticides by aircraft or ground equipment. Part 325.1(i) – application of pesticides – the placement for effect of a pesticide at or on the location where pest control is desired.		
application method - the application of a pesticide using a particular type of equipment, mechanism, or device, including, but not limited to, ground boom, air-blast sprayer, wand, and backpack sprayer, as well		No specific definition in state law or regulations. ECL 33-101(8)- application of pesticides is close but not worded as application method.		

Federal Change Proposed	Revised Federal Regulation Section	Current NY Situation/Requirement		Change
		Private Applicator	Commercial Applicator	
as methods such as aerial, chemigation, and fumigation				
application method-specific certification category - a defined set of competencies related to the use of a specific application method to apply restricted use pesticides.		No definition in state law or regulation.		
applicator - any individual using a restricted use pesticide. An applicator may be certified as a commercial or private applicator as defined in FIFRA or may be a noncertified applicator as defined in this part.		No definition in state law or regulation.		
certifying authority - the Agency, or a State, Tribal, or Federal agency that issues restricted use pesticide applicator certifications pursuant to a certification plan approved by the Agency under this part.		No definition in state law or regulation.		
fumigant - any pesticide product that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is achieved through the gaseous or vapor state.		Part 325.1 ah) – any pesticide product that is a vapor or gas, or forms a vapor or gas on application, and whose pesticidal action is through the gaseous state.		Add vapor state to how pesticidal action is achieved.
fumigation - the application of a fumigant.		No definition in state law or regulation.		
Indian country – (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation. (b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State. (c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.		No definition in state law or regulation.		

Federal Change Proposed	Revised Federal Regulation Section	Current NY Situation/Requirement		Change
		Private Applicator	Commercial Applicator	
Indian Tribe - any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community included in the list of Tribes published by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act.		No definition in state law or regulation.		
mishap - an event that may adversely affect man or the environment and that is related to the use or presence of a pesticide, whether the event was unexpected or intentional.		No definition in state law or regulation.		
noncertified applicator - any person who is not certified in accordance with this part to use or supervise the use of restricted use pesticides in the pertinent jurisdiction, but who is using restricted use pesticides under the direct supervision of a person certified as a commercial or private applicator in accordance with this part.		No definition in state law or regulation.		
personal protective equipment - devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.		Part 325.1(av) – apparel and devices worn to protect the body from contact with pesticides or pesticide residues, including: coveralls, chemical-resistant suits, gloves, footwear, aprons and headgear, protective eyewear, and respirators.		
use - any of the following: (1) Pre-application activities, including, but not limited to: (i) Arranging for the application of the pesticide. (ii) Mixing and loading the pesticide. (iii) Making necessary preparations for the application of the pesticide, including, but not limited to, responsibilities related to providing training, a copy of a label and use-specific instructions to noncertified applicators, and		Part 325.1(ax) – pesticide use – performance of the following pesticide-related activities: application; mixing; loading; transport, storage or handling after manufacturer’s seal is broken; cleaning of pesticide application equipment; and any required preparation of container for disposal.		Besides what’s specified in state regulations, the following would be considered pesticide use based on the proposed definition: <ul style="list-style-type: none"> • Arranging for the application of the pesticide. • Making necessary preparations for the application of the

Federal Change Proposed	Revised Federal Regulation Section	Current NY Situation/Requirement		Change
		Private Applicator	Commercial Applicator	
<p>complying with any applicable requirements under 40 CFR part 170.</p> <p>(2) Applying the pesticide, including, but not limited to, supervising the use of a pesticide by a noncertified applicator.</p> <p>(3) Post-application activities, including, but not limited to, transporting or storing pesticide containers that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other materials contaminated with or containing pesticides.</p>				<p>pesticide, including, but not limited to, responsibilities related to providing training, a copy of a label and use-specific instructions to noncertified applicators, and complying with any applicable requirements under 40 CFR part 170 (Worker Protection Standard).</p>
<p><i>use-specific instructions</i> - the information and requirements specific to a particular pesticide product or work site that are necessary in order for an applicator to use the pesticide in accordance with applicable requirements and without causing unreasonable adverse effects.</p>		No definition in state law or regulation.		
Definitions to be Deleted				
Act				
Agency				
forest				
uncertified person				
hazard				
B. Restructuring of 40 CFR 171				
<p>Reorganize 40 CFR 171 into four subparts:</p> <ul style="list-style-type: none"> • General Provisions • Certification Requirements for Applicators of Restricted Use Pesticides • Supervision of Noncertified Applicators • Certification Plans 				
Implementation				
<ul style="list-style-type: none"> • Rules effective 60 days after publication of promulgated rule. 				

Federal Change Proposed	Revised Federal Regulation Section	Current NY Situation/Requirement		Change
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<ul style="list-style-type: none"> • Compliance would be delayed. • Existing plans could remain in effect for up to 4 years after effective date of the final rule. After 4 years, all plans must comply with the new requirements. • States/tribes must submit revised certification plans within 2 years of the effective date of final rule. • EPA intends to develop training materials for noncertified applicators working under the direct supervision of a certified applicator and for certification in a non-soil fumigation category. • EPA to provide guidance document at time of final rule being published that would provide assistance to states and to conduct outreach to potentially affected parties. 				