

**Center for Regulatory Effectiveness (“CRE”) Comments on
U.S. Environmental Protection Agency’s (“EPA”) Requested
Information Collection Request (“ICR”) for EPA’s
Proposed Rules for the Certification of Pesticide Applicators
 (“Certification Rules”); and on**

**EPA’s Requested ICR for Pesticide Worker Protection
Standards (“WPS”), EPA ICR 201403-2070-001,
RIN 2070-AJ22.**

**Comments Filed September 23, 2015, with the Office of
Management and Budget/Office of Information and
Regulatory Affairs (“OIRA”) at
oira_submissions@omb.eop.gov, Attention: Desk Officer for
the EPA; and**

**on September 23, 2015, with EPA at www.regulations.gov,
Docket Identification (ID) Number EPA–HQ–OPP–2011–0183.**

I. Executive Summary

CRE does not object to EPA’s requested ICR for the Certification Rules so long as

- the record for the Certification Rules and their ICR continues to clearly state, “When used in accordance with label restrictions, RUPs [restricted use pesticides] can be safely applied”; and

- before clearance, OIRA requires EPA to produce a public record that demonstrates the ICR’s compliance with IQA Guidelines. Hypothetically, this requirement might be demonstrated by a written EPA statement pointing to parts of the current record that demonstrate compliance with IQA Guidelines.¹

¹ EPA’s requested ICR and its record for the Certification Rules are available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2011-0183-0044> .

The proposed Certification Rules and ICR are related to EPA's WPS Rules and ICR. The WPS Rules and ICR are now being reviewed by OIRA. OIRA should not clear them unless and until

- their record clearly states, “When used in accordance with label restrictions, all pesticides subject to the WPS Rules and their ICR can be safely applied”; and
- EPA has produced a public record that demonstrates that the WPS Rules and their ICR comply with IQA Guidelines.

II. Pesticides are Safe When Used According to Their Label Restrictions

EPA repeatedly emphasizes that the purpose of the proposed Certification Rules is to help prevent adverse human health and environmental effects from misuse and misapplication of pesticides.²

EPA also correctly and repeatedly emphasizes that

“When used in accordance with label restrictions, RUPs [restricted use pesticides] can be safely applied; however, if the applicators are not competent, then RUPs have the potential to pose unreasonable risks of damage to humans, terrestrial and aquatic ecosystems, non-target animals, plants, and surface water. Ensuring that applicators are competent would prevent these unwarranted exposures.”³

The same conclusion applies to all pesticides used in accordance with their EPA-required label restrictions. Those restrictions are applied after EPA's extensive FIFRA review of the science and facts regarding the safety of a specific pesticide. After this review EPA authorizes the use of that pesticide only in accordance with the label restrictions imposed by EPA. Those restrictions are the measures that EPA deems necessary to ensure that the pesticide is used safely, including pesticide worker and applicator safety. Any

² *E.g.*, Economic Analysis, Chapter 6.1 page 2, at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2011-0183-0043>; Economic Analysis, Executive Summary page 3, at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2011-0183-0043>; Economic Analysis, Chapter 6.4.1 page 10, at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2011-0183-0043>; Economic Analysis, Chapter 6.4.1 page 16, at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2011-0183-0043>.

³ *E.g.*, Economic Analysis, Chapter 6, page 1, at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2011-0183-0043>; *Accord*, Proposed Rule, 80 FR 51356, 51358 (August 24, 2015), at <http://www.gpo.gov/fdsys/pkg/FR-2015-08-24/pdf/2015-19988.pdf>.

reconsideration of the safety and effects of a specific pesticide has to be done for that specific pesticide pursuant to FIFRA-required procedures.

CRE made and discussed these points extensively in CRE's previously filed comments on EPA's proposed WPS Rules. These previous comments are incorporated by reference into CRE's comments on the proposed Certification Rules and on EPA's requested ICR for them.⁴

OIRA should not approve EPA's requested ICR for the proposed Certification Rules unless the record continues to clearly state, "When used in accordance with label restrictions, RUPs [restricted use pesticides] can be safely applied."

III. The WPS Rules and ICR Should Also State that Pesticides Can Be Safely Used In Accordance with their Label Restrictions.

The Certification and WPS rules are related. EPA explains:

"The pesticide worker safety program at EPA includes two primary regulations, the Certification of Pesticide Applicators and the Worker Protection Standard. The Certification of Pesticide Applicators regulation, 40 CFR Part 171, establishes national standards for the certification of applicators of RUPs [restricted use pesticides] and the requirements for submission and approval of state plans for the certification of applicators....The Worker Protection Standard, 40 CFR part 170, protects employees of agricultural establishments and commercial pesticide application establishments from exposure to pesticides on farms, forests, nurseries and greenhouses. These two regulations, along with the other components of the Agency's pesticide worker safety program, are intended to reduce and prevent potential exposures to pesticides among pesticide applicators, employees, the general public, including vulnerable populations such as children, and to the environment. Proposed revisions to the Worker Protection Standard are the subject of a separate rulemaking (EPA, 2014a)."⁵

EPA's proposed WPS rules do not contain EPA's Certification Rules' statement that pesticides used in accordance with their label restrictions can be safely applied. The WPS Rules and their ICR should be revised to contain this statement. It would be arbitrary, capricious and incorrect for EPA to claim or imply in the WPS Rules and ICR that pesticides are not safe even when they are applied in accordance with their label

⁴ CRE's previously filed comments on EPA's proposed WPS Rules are available at <http://thecre.com/pdf/wpscomments.pdf>. These WPS comments are incorporated by reference herein in their entirety.

⁵ Economic Analysis, Chapter 1.1 pages 1-2 at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2011-0183-0043>.

restrictions, when EPA acknowledges in the Certification Rules and ICR that such pesticide use is safe.

There is no rational basis for maintaining different positions on this issue in the Certification and WPS Rules and their ICRs. Both Rules and ICRs should state that pesticides can be safely used in accordance with their label restrictions because that statement is supported by EPA's FIFRA registration records and decisions for each individual pesticide. There are no records supporting a contrary conclusion. If EPA disagrees then the Agency has disregarded and rejected its own FIFRA records and decisions.

OIRA has not yet approved any ICR for EPA's proposed WPS Rules.⁶ OIRA is now reviewing final WPS rules under Executive order 12866.⁷ We do not know how much the WPS rules have changed since they were proposed and subjected to very adverse comments by CRE and other stakeholders.

In light of the above, we ask that OIRA consider CRE's comments on the Proposed Certification Rules and ICR when reviewing EPA's final WPS Rules and EPA's requested ICR for them.

We further ask that EPA not clear final WPS Rules under Executive Order 12866, or approve a Final ICR for them, until and unless their records clearly state, "When used in accordance with label restrictions, all pesticides subject to these Worker Protection Standards can be safely applied."

IV. EPA's Rules and ICRs Must Demonstrate IQA Guidelines Compliance; Yet EPA Doesn't Mention the IQA in Either the Certification or WPS Rules

Except for CRE's comments, we have found no reference to IQA Guidelines anywhere in the records for the Certification and WPS Rules and ICRs.

This omission violates OMB's requirement that EPA demonstrate that all its rules and ICRs comply with IQA Guidelines. OMB states:

"[Y]ou [EPA] should assure compliance with the Information Quality Guidelines for your agency and OMB's 'Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies' ('data quality guidelines')...."

⁶ See [http://www.reginfo.gov/public/do/PRAViewICR and ICRs?ref_nbr=201403-2070-001](http://www.reginfo.gov/public/do/PRAViewICR%20and%20ICRs?ref_nbr=201403-2070-001) .

⁷ See <http://yosemite.epa.gov/opei/rulegate.nsf/byRIN/2070-AJ22> .

“Information Quality Guidelines Under the Information Quality Law, agency guidelines, in conformance with the OMB government-wide guidelines (67 FR 8452, February 22, 2002), have established basic quality performance goals for all information disseminated by agencies, including information disseminated in support of proposed and final rules. The data and analysis that you use to support your rule must meet these agency and OMB quality standards.”⁸

EPA’s own IQA Guidelines emphasize that EPA will demonstrate IQA Guidelines compliance for every ICR that EPA submits to OMB:

“For all proposed collections of information that will be disseminated to the public, EPA intends to demonstrate in our Paperwork Reduction Act clearance submissions that the proposed collection of information will result in information that will be collected, maintained and used in ways consistent with the OMB guidelines and these EPA Guidelines. These Guidelines apply to all information EPA disseminates to the public....”⁹

In order for OMB to approve an ICR for the Certification or WPS Rules, EPA must demonstrate that EPA’s requested ICRs will generate information that meets the IQA quality standards of accuracy, reliability, reproducibility and utility. OMB’s IQA guidance is unambiguous and unequivocal on this requirement:

“...we note that each agency is already required to demonstrate the 'practical utility' of a proposed collection of information in its PRA submission, i.e., for draft information collections designed to gather information that the agency plans to disseminate. Thus, we think it important that each agency should declare in its guidelines that it will demonstrate in its PRA clearance packages that each such draft information collection will result in information that will be collected, maintained, and used in a way consistent with the OMB and agency information quality standards. It is important that we make use of the PRA clearance process to help improve the quality of information that agencies collect and disseminate. Thus, OMB will approve only those information collections that are likely to obtain data that will comply with the OMB and agency information quality guidelines.”¹⁰

⁸ OMB Circular A-4, at http://www.whitehouse.gov/omb/circulars_a004_a-4 .

⁹ EPA IQA Guidelines, page 28, at http://www.epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf (footnotes omitted).

¹⁰ Page 12 of OMB IQA Guidance at http://www.whitehouse.gov/sites/default/files/omb/inforeg/iqg_comments.pdf .

CRE's previously filed comments on the proposed WPS Rules and ICR that explain why those Rules and ICR violate IQA Guidelines. CRE incorporates those previous comments by reference and will not repeat their IQA non-compliance explanation here.¹¹

Our criticisms are based on the proposed WPS rules and on EPA's record for them. We have not seen the final WPS Rules or record that EPA has sent to OIRA for review under Executive order 12866 (and presumably the Paperwork Reduction Act because OIRA has not approved an ICR for the WPS rules). The final WPS rules and ICR and their records might mitigate our previous IQA criticisms of them.

We ask that OIRA not approve final WPS Rules or an ICR for them until and unless EPA has produced a public record that demonstrates IQA Guidelines compliance.

With regard to the proposed Certification Rules and ICR, we do not find IQA noncompliance to the same extent as with the proposed WPS Rules and ICR. However, we do ask OIRA to require EPA to produce a public record that demonstrates IQA Guidelines compliance. Hypothetically, a written EPA statement pointing to parts of the current record that demonstrate compliance with IQA Guidelines might satisfy this requirement.

We thank you for this opportunity to comment.

The Center for Regulatory Effectiveness
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¹¹ The IQA explanation is at pages 14-18 of CRE's WPS comments, which are available at <http://thecre.com/pdf/wpscomments.pdf>.