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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 171**

**[EPA-HQ-OPP-2011-0183; FRL-9962-31]**

**RIN 2070-AK38**

**Pesticides; Certification of Pesticide Applicators Rule; Extension of Effective Date**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; request for comments.

**SUMMARY:** On January 4, 2017, EPA published a final rule revising the regulation concerning the certification of applicators of restricted use pesticides (RUPs). The original effective date of March 6, 2017 was extended to March 21, 2017 by rule issued January 26, 2017, and subsequently extended to May 22, 2017 by rule issued March 20, 2017. In accordance with the Presidential directives as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review," and the principles identified in the April 25, 2017 Executive Order "Promoting Agriculture and Rural Prosperity in America," EPA is proposing to further delay the effective date of the January 4, 2017 revisions to the Certification of Pesticide Applicators rule until May 22, 2018.

**DATES:** Comments must be received on or before May 19, 2017.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2011-0183, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC) (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, are available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Kevin Keaney, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-5557; email address: [keaney.kevin@epa.gov](mailto:keaney.kevin@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

On January 26, 2017, EPA published a final rule in the **Federal Register** entitled "Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency Between October 28, 2016 and January 17, 2017" (82 FR 8499). In that rule, EPA delayed the effective dates of the five regulations, including the final rule revising the regulation concerning the certification of applicators of restricted use pesticides (RUPs)

issued on January 4, 2017 (82 FR 952) (FR-9956-70), as requested in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review" (January 20 Memorandum). The January 20 Memorandum directed the heads of Executive Departments and Agencies to postpone for 60 days from the date of the January 20 Memorandum the effective dates of all regulations that had been published in the Federal Register but had not yet taken effect.

The January 20 Memorandum further directed that where appropriate and as permitted by applicable law, agencies should consider a rule to delay the effective date for regulations beyond that 60-day period. Accordingly, on March 20, 2017, EPA published the final rule "Further Delay of Effective Dates for Five Final Regulations Published by the Environmental Protection Agency Between December 12, 2016 and January 17, 2017" (82 FR 14324), which applied to the revised Certification of Pesticide Applicators rule and four other rules. Pursuant to that March 20, 2017 rule, the effective date of the revised Certification of Pesticide Applicators rule was extended to May 22, 2017.

Upon further review, EPA has determined that the effective date of the revised Certification of Pesticide Applicators rule should be extended until May 22, 2018. EPA is taking this action to give recently arrived Agency officials the opportunity to conduct a substantive review of the revised Certification of Pesticide Applicators rule.

In view of the imminence of the revised Certification of Pesticide Applicators rule's May 22, 2017 effective date, EPA is reducing the duration of the comment period specified in 5 U.S.C. 553(d) to five days. EPA believes that five days is adequate time for interested parties to express their views on the whether the effective date of the revised Certification of Pesticide Applicators rule should be extended to allow substantive review. During this one-

year extension, state certifying authorities and certified commercial and private applicators would be relieved of restrictions and burdens that would otherwise be imposed by the January 4, 2017 revisions to the Certification of Pesticide Applicators rule. Because this request for comments relieves a restriction, it is eligible for the exemption in 5 U.S.C. 553(d)(1) allowing a reduced comment period.

EPA's decision to shorten the comment period is also based on the good cause exception in 5 U.S.C. 553(d)(3). The Agency has determined that a full 30-day comment period is impracticable, unnecessary and contrary to the public interest. EPA has determined a substantive review of the revised Certification of Pesticide Applicators rule is appropriate and consistent with the principles identified in the April 25, 2017 Executive Order "Promoting Agriculture and Rural Prosperity in America". Given that a 30-day comment period would extend beyond the Certification of Pesticide Applicators rule's May 22, 2017 effective date, such a 30-day comment would be impractical and contrary to the public interest in that it would require states, tribes, and the regulated community to adopt new measures to comply with a regulation that the Agency intends to substantively review, and possibly revise.

For the foregoing reasons, the EPA relies on the exceptions in 5 U.S.C. 553(d)(1) and (3) to issue this document with a five-day comment period.

## **II. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review; and, Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action as that term is defined in Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, this request for comments is not

subject to requirements of EO 12866 that apply to significant regulatory actions.

*B. Paperwork Reduction Act*

This request for comments does not involve any information collection activities subject to the PRA, 44 U.S.C. 3501 *et seq.*

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under RFA, 5 U.S.C. 601 *et seq.*

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000).

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

This request for comments is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by

Executive Order 12866.

*H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272 note.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

EPA believes that this action would not have disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

Dated: May 4, 2017.

E. Scott Pruitt, Administrator.

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