



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2022-0509 and EPA-HQ-OPP-2011-0037; FRL-7661-04-OCSP]

Notice of Approval Status; EPA Plan for the Federal Certification of Applicators within Indian Country

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing its approval of the revised EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides within Indian Country (2023 EPA Plan). The 2023 EPA Plan is specific to the use of restricted use pesticides (RUPs) in Indian country. Because of limitations in Certification of Pesticide Applicators Rule (CPA Rule), RUPs may not be used legally in Indian country unless the Tribe has an EPA-approved certification plan, the Tribe has entered into an agreement with EPA, or EPA has issued a Federal certification plan for Indian country. The 2023 EPA Plan supersedes the 2014 EPA Plan and ensures applicators in Indian country have the competence needed to use RUPs. The amended plan is consistent with the existing regulatory requirements, including revisions made in 2017 to enhance and improve the competency of certified applicators of RUPs and persons working under their direct supervision. The 2017 regulatory revisions are intended to further reduce potential exposure of RUPs to certified applicators and those working under their direct supervision, other workers, the public, and the environment. Federal, State, Territory, and Tribal certifying authorities with existing certification plans were required to revise their existing plans to conform with the updated Federal standards for RUP applicator certification and receive EPA approval by the established regulatory deadline.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* The designated EPA points of contact for the 2023 EPA Plan as listed in Table 1 of Unit I.B.

For general information contact: Carolyn Schroeder, Pesticide Re-Evaluation Division

(7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-2376; email address: *schroeder.carolyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General information

A. Does this action apply to me?

You may be potentially affected by or interested in this action if you are a Federal, State, Territory, or Tribal agency who administers a certification program for pesticides applicators. You may also be potentially affected by or interested in this action if you are: A registrant of RUP products; a person who applies RUPs, including those under the direct supervision of a certified applicator; a person who relies upon the availability of RUPs; someone who hires a certified applicator to apply an RUP; a pesticide safety educator; or other person who provides pesticide safety training for pesticide applicator certification or recertification. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agricultural Establishments (Crop Production) (NAICS code 111).
- Nursery and Tree Production (NAICS code 111421).
- Agricultural Pest Control and Pesticide Handling on Farms (NAICS code 115112).
- Crop Advisors (NAICS codes 115112, 541690, 541712).
- Agricultural (Animal) Pest Control (Livestock Spraying) (NAICS code 115210).
- Forestry Pest Control (NAICS code 115310).
- Wood Preservation Pest Control (NAICS code 321114).
- Pesticide Registrants (NAICS code 325320).
- Pesticide Dealers (NAICS codes 424690, 424910, 444220).
- Industrial, Institutional, Structural & Health Related Pest Control (NAICS code

561710).

- Ornamental & Turf, Rights-of-Way Pest Control (NAICS code 561730).
- Environmental Protection Program Administrators (NAICS code 924110).
- Governmental Pest Control Programs (NAICS code 926140).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

This notice of approval, as well as a copy of the final 2023 EPA Plan, is available in the dockets for this action at <https://www.regulations.gov>, identified by docket identification (ID) number EPA-HQ-OPP-2022-0509 and EPA-HQ-OPP-2011-0037. Additional instructions on visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

Additional information on the EPA Plan for Indian country is available on EPA's website at <https://www.epa.gov/pesticide-applicator-certification-indian-country>. EPA also provides frequent status updates regarding the reviews and approvals of State and Territory certification plans on its website at <https://www.epa.gov/pesticide-worker-safety/certification-standards-pesticide-applicators>.

For additional assistance in locating documents related to the approved plan identified in this notice, please consult the designated EPA point of contact for the Certification Plan of interest as listed in Table 1 of this unit, or the general contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Table 1 - Designated EPA Point of Contacts for the EPA Plan.

EPA Office	Certification Plan	EPA Point of Contact	POC Phone	Email
Office of Pesticide Programs	EPA Plan for the Federal Certification of Applicators within Indian Country	Thomas Lopiano Jennifer Park	(202) 566-2390 (202) 566-2448	lopiano.thomas@epa.gov park.jennifer@epa.gov

II. What is the Agency's authority for taking this action?

Section 11 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), 7. U.S.C. 136 *et seq.*, requires certifying authorities to have an EPA-approved certification plan to certify applicators of RUPs. The CPA regulation at 40 CFR part 171 was amended in 2017 (Ref. 1). As a result, Federal, State, Territory, and Tribal certifying authorities with existing certification plans were required to revise their existing certification plans to conform with the updated Federal standards for the certification of applicators of RUPs and submit their revisions to EPA by March 2020 for EPA review and approval. The CPA regulation specifies that the existing certification plans remain in place until the revised plans are approved by EPA on or before the regulatory deadline established in 40 CFR 171.5. The Agency has since issued a final rule extending the original deadline for certification plans to comply with the updated Federal standards under the 2017 CPA rule to November 4, 2023 (Ref. 2).

FIFRA section 11(a)(1) also requires that in any Tribe for which a Tribal plan for applicator certification has not been approved by the EPA Administrator, the Administrator, in consultation with the Chairperson of such Tribe, shall conduct a program for the certification of applicators of pesticides. The CPA regulation at 40 CFR part 171.307(c) requires the Agency, in consultation with Tribes, to implement an EPA-administered certification plan to certify private and commercial applicators in areas of Indian country where no other EPA-approved certification plan or an EPA-Tribal agreement is in place and where the relevant Tribe has not chosen to opt out of the EPA-administered plan.

III. What action is the Agency taking?

This action gives notice that the 2023 EPA Plan (Ref. 3) meets the standards of 40 CFR part 171 and is now an approved plan. EPA may certify RUP applicators and continue with implementation of the revised certification plan as outlined in the 2023 EPA Plan's implementation section. EPA will implement this Federal program to certify applicators of RUPs in areas of Indian country where no other EPA-approved or EPA-implemented plan applies. This

plan will not be applicable in areas where a Tribe has opted out of the 2023 EPA Plan consistent with 40 CFR 171.307(c)(2). The 2023 EPA Plan, which supersedes the 2014 EPA Plan, describes the updated process by which EPA will implement a program for the certification of applicators of RUPs in Indian country based upon the certification requirements enumerated at 40 CFR part 171. The final 2023 EPA Plan, in its entirety, is included in the docket.

IV. Summary of the Final 2023 EPA Plan

On March 2, 2020, EPA published a *Federal Register* notice seeking comment on proposed revisions to the EPA-administered Federal pesticide applicator certification plan to certify applicators of RUPs in areas of Indian country that are not covered by any other EPA-approved certification plan (Ref. 4). The proposed revisions sought to bring the EPA Plan for Indian country into compliance with the updated CPA regulation at 40 CFR part 171 that was amended in 2017 (Ref. 1). Unit VI of the 2020 notice provides additional background and context for the development of the revised EPA Plan, while Unit VII of that notice provides an overview of the proposed changes to the EPA Plan. EPA did not receive any comments during the comment period for the 2020 notice.

In developing what is now the final 2023 EPA Plan, EPA also consulted with affected Tribes as required under 40 CFR 171.307(c) and 171.311(d)(1). The Tribal consultation period started on February 10, 2020, and was scheduled to end on May 1, 2020. However, due to the impact of the COVID-19 public health emergency, EPA extended the Tribal consultation period to August 3, 2020. During the Tribal consultation period, EPA consulted with federally recognized Tribes on February 26, April 6, and July 15, 2020, to help ensure the proposed revisions to the 2014 EPA Plan effectively met their needs and those of RUP applicators in Indian country. More information about the Tribal consultation can be found on the Tribal Consultation Opportunities Tracking System (Ref. 5).

EPA has finalized many of its proposals as described in the 2020 notice. However, EPA has revised some of its proposals in response to the feedback received during the Tribal

consultation period. In other areas, EPA has refined and provided additional detail to increase clarity and transparency in the plan and the process. These revisions include:

- Clarifying definitions of private and commercial applicators;
- Providing an additional acceptable identification specific to Tribes;
- Adding descriptions of Tribes that have their own certification plans under 40 CFR

171.307(a) or (b);

- Listing out Federal minimum standards for recordkeeping requirements for commercial applicators, certified applicator responsibilities for direct supervision of noncertified applicators, and noncertified applicator qualifications; and

- Outlining the implementation of the revised EPA Plan.

Due to limitation in the CPA regulation, RUPs may not be used legally in Indian country unless the Tribe has an EPA-approved certification plan, the Tribe has entered into an agreement with EPA, or EPA has issued a Federal certification plan for Indian country. The EPA Plan provides that third option for Tribes to allow for applicator certification within Indian country; however, Tribes may also opt out of the EPA Plan and RUP use will generally be prohibited in their areas of Indian country. Tribes may also have their own additional Tribal laws and codes in addition to the EPA Plan and applicators who wish to apply in Indian country should contact the relevant Tribe to ensure the application is compliant with both.

V. References

The following is a list of documents that are related to the issuance of this Notice. For assistance in locating these other documents, please see Table 1 in Unit I.B.

1. EPA. Pesticides; Certification of Pesticide Applicators; Final Rule. *Federal Register*. 82 FR 952, January 4, 2017 (FRL-9956-70).

2. EPA. Pesticides; Certification of Pesticide Applicators; Further Extension to Expiration Date of Certification Plans; Final Rule. *Federal Register*. 87 FR 50953, August 19, 2022 (FRL-9134.1-04-OCSPP).

3. EPA. EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides within Indian Country. September 26, 2023. Docket ID No. EPA-HQ-OPP-2022-0509 and Docket ID No. EPA-HQ-OPP-2011-0037.

4. EPA. EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides Within Indian Country; Proposed Revisions; Notice of Availability and Request for Comment. *Federal Register*. 85 FR 12244, March 2, 2020 (FRL-10005-59).

5. EPA. Tribal Consultation Opportunities Tracking System. Available at <https://tcots.epa.gov/ords/tcotspub/f?p=106:5::988::RR,2::>. Accessed September 20, 2023.

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Dated: September 27, 2023.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

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