



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

July 27, 2020

MEMORANDUM

SUBJECT: Guidance regarding the Certification of Pesticide Applicators during the COVID-19 Public Health Emergency

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TO: State, tribal and federal certifying authorities

I. Introduction

The Environmental Protection Agency (EPA) recognizes the challenges states, tribes and federal agencies have faced during the COVID-19 public health emergency (PHE). This temporary guidance provides a framework for flexibility during this period to support state, tribal and federal efforts in response to impacts to their pesticide applicator certification programs. To help states, tribes, and federal certifying authorities meet both the needs of applicators and the requirements of the Certification of Pesticide Applicators (CPA) rule ([40 CFR Part 171](#)) during this COVID-19 PHE, EPA has developed this guidance based on certifying authorities' input. Section III outlines the options and process for making modifications to pesticide applicator certification plans. Section IV addresses pesticide applicators certifications administered by EPA within Indian country. Section V addresses the process for revision and termination of this temporary guidance.

II. Background

The Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) requires any person who applies or supervises the use of [restricted use pesticides \(RUPs\)](#) to be certified in accordance with EPA regulations and applicable state, or tribal laws. Pesticide applicators must be competent in the use and handling of the RUPs covered by the individual's certification. EPA's CPA rule at 40 CFR Part 171 establishes minimum standards of competency for pesticide applicators that apply or supervise the use of RUPs. Each state, tribal, and federal certifying authority implements a certification program to ensure applicator competency to use pesticides without causing unreasonable adverse effects, including a recertification process to ensure that applicators maintain ongoing competency. As of March 4, 2020, certifying authorities submitted revised certification plans to comply with 2017 revisions to the CPA rule. Pending EPA's review and approval of these revised plans, current certifications are subject to the terms of the previously approved certification plans, which remain in effect.

III. Temporary Modification of Certification Plans in Response to COVID-19

EPA is aware that state, tribal, and federal certifying authorities may need to make temporary changes to their existing pesticide applicator certification programs in response to the COVID-19 PHE. The current PHE may be affecting the certification and recertification processes for pesticide applicators in a number of ways. One challenge reported by most certifying authorities is that candidates for certification and recertification may be unable to take in-person exams and/or training that are required in the certification or recertification process because of exam and training provider closures due to the PHE. Because circumstances vary around the country, EPA anticipates that certifying authorities may choose different approaches to modify their certification programs to accommodate applicators resulting from COVID-19 disruptions.

Given the evolving circumstances and the urgency involved, EPA has determined that certain temporary changes to pesticide applicator certification programs should be preapproved and may be implemented by certifying authorities. Provided the conditions in Section A below are met, the permissible changes are not expected to diminish overall applicator competency to a degree greater than the normal variation the CPA rule allows between state plans. In addition, so long as such temporary changes are reported to EPA as provided in Section B below, EPA does not intend to impose sanctions on certification programs that miss reporting deadlines specified in the CPA rule.

A. Conditions for Making Modifications to Certification Plans

40 CFR 171.309(a)(3) requires certifying authorities to obtain approval before making any substantial modifications to an approved certification plan. 40 CFR 171.309(a)(3) says the following are substantial modifications:

- (i) Addition or deletion of a mechanism for certification and/or recertification;
- (ii) Establishment of a new private applicator category, private applicator subcategory, commercial applicator category, or commercial applicator subcategory; and
- (iii) Any other changes that the Agency has notified the State, Tribal or Federal agency that the Agency considers to be substantial modifications.

In response to the COVID-19 PHE, EPA is temporarily pre-approving substantial modifications provided that the modifications meet all of the following conditions:

- Time-limited to not later than December 31, 2021, and revocable within 90 days or less by the certifying authority if EPA determines that the modification is no longer appropriate;¹
- Consistent with pesticide labeling;
- Consistent with 40 CFR Part 171;
- Will not significantly diminish applicator competency; and
- Will not undermine future certification activities.

EPA recognizes that certifying authorities are exploring a variety of options to address the disruptions the COVID-19 PHE has caused in regard to the certification of pesticide applicators.

¹ EPA will assess the continued need for and scope of this temporary guidance on a regular basis. See Section V for additional information.

In addition to the general conditions listed above, EPA has identified some specific temporary modifications targeted to the challenges of the current PHE that, whether substantial or not, can be pre-approved.² For the duration of the COVID-19 PHE, the following modifications are pre-approved if they meet all of the conditions listed above:

- Relying upon training or testing conducted by or approved by another certifying authority for applicator certification or recertification;
- Offering remote (e.g., internet-based) testing or testing administered by a third party as long as the requirements of 40 CFR 171.103 related to exam administration and security are satisfied;
- Offering remote (e.g., internet-based) training rather than, or in addition to, face-to-face training for applicator certification or recertification;
- Extending the duration of the certification/recertification period so those with expiring certifications would still have a valid certification, so long as no certification extends beyond five years (per 40 CFR 171.107(a)); and
- Where existing state, tribal or federal agency requirements are more stringent than the requirements of 40 CFR part 171, any modification to make the state, tribal or federal agency certification program consistent with 40 CFR part 171, including:
 - Suspending any or all certification requirements for applicators of general use pesticides (i.e., non-RUPs); and
 - Allowing use of RUPs under the direct supervision of a certified applicator in accordance with 40 CFR 171.201.

Pre-approved modifications do not require advance notice to EPA. Certifying authorities must report pre-approved modifications as provided in Section B below.

Certifying authorities must still obtain EPA's advance approval of substantial modifications of their certification plans that do not meet all of the above conditions. Modifications to certification programs in response to the COVID-19 PHE that are not consistent with pesticide labeling and/or would significantly diminish applicator competency or undermine future certification activities are unlikely to be approved. For example, EPA is unlikely to approve the following modifications:

- Waiving of initial certification requirements for applicators of RUPs.
- Waiving of pesticide label requirements (e.g., product-specific training or certifications).
- Providing online examinations that compromise exam integrity or security (e.g., discloses exam questions).

State and tribal certifying authorities should contact their EPA Region for more information or to request approvals for substantial modifications to be made in response to the COVID-19 PHE.

B. Annual Report and Notifications of Plan Modifications

The CPA rule at 40 CFR 171.303(c) and 171.305(c) requires certifying authorities to commit to submitting annual reports to EPA on the total number of applicators certified, plan modifications, and a summary of enforcement. The next annual report is due December 31, 2020.

² This list is not intended to characterize these modifications as either substantial or non-substantial. In many cases a particular certifying authority's implementation of some of these modifications might be either substantial or non-substantial, depending on the specific circumstances.

The CPA rule at 40 CFR 171.309(a)(2) authorizes certifying authorities to make non-substantial changes to their certification plans without prior EPA approval, but requires certifying authorities to notify EPA of non-substantial modifications within 90 days or with the required annual report, whichever occurs first. Non-compliance with reporting requirements of the CPA rule, among other things, could be grounds for withdrawal of a certification plan approval per 40 CFR 171.309(b). For temporary modifications that meet the criteria for preapproval in Section A above, EPA does not intend to consider noncompliance with this reporting requirement grounds for withdrawing approval of a state, tribal, or federal agency certification plan, provided that notifications are included in the annual reporting due December 31, 2020. EPA believes this to be appropriate because of the burdens the COVID-19 PHE is placing on certifying authorities, the relatively short extension allowed, and the fact that the burdens the COVID-19 PHE is placing on EPA make it unlikely EPA would review or act upon notifications of pre-approved modifications before 2021. EPA will accept notifications included in the December 31, 2020 annual report as sufficient and does not intend to consider noncompliance with the 90-day notification requirement grounds for withdrawing approval of a state, tribal, or federal agency certification plan during the COVID-19 PHE.

For modifications made pursuant to this guidance, notifications of all substantial and non-substantial modifications provided to EPA with the annual reporting should document the cause(s) and circumstances of the change. Reports of plan modifications for the 2020 annual report should include:

- A description of any plan modifications;
- The effective period of the change(s) (e.g., “for one year from X date, or until revoked”);
- A statement regarding the revocability of the modification;
- Why the change(s) was made;
- How the change(s) was made;
- An explanation of how the modification(s) do not significantly diminish applicator competency nor undermine future certification activities; and
- A statement that the modified plan complies with the requirements of FIFRA and the CPA rule.

C. Additional Options to Address Pesticide Applicator Needs

Rather than modify or waive program requirements, certifying authorities are encouraged to suggest alternatives to certification or recertification available to applicators. For example:

- Substitution of pesticide products that do not require certification or specialized training. Resources like university extension services may be able to assist in identifying appropriate alternative products.
- Secure the services of a commercial applicator with the required certification for the application.
- The following noncertified applicators may apply RUPs under the direct supervision of a certified applicator if the requirements of 40 CFR 171.201 are met³:
 - Pesticide handlers who have received 40 CFR part 170 Agricultural Worker Pesticide Standard-required training;

³ Note that some RUP labels do not permit use by noncertified applicators. This certification program guidance does not supersede any label requirements.

- Certified applicators who are certified in a different category (including private applicators applying under commercial categories) or are certified in a different jurisdiction;
- Other persons trained in accordance with 40 CFR 171.201(d) or equivalent.
- Delay application of pesticides until any required certification and/or training are available to the applicator.

Pesticide applicators and other interested persons should contact the state or tribal pesticide regulatory agency for requirements in the jurisdiction of the RUP use.

IV. Status of Certifications under the EPA Plan for Indian Country

EPA administers the *EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides within Indian Country* (2014 EPA Plan) for those areas of Indian country where no other EPA-approved or EPA-implemented plan applies for the federal certification of private and commercial applicators of RUPs. Proposed revisions to the 2014 EPA Plan were published for public comment on March 2, 2020 (85 FR 12244; docket number [EPA-HQ-OPP-2011-0037](#)), but the 2014 EPA Plan remains in effect. EPA certifies commercial and private applicators based upon the pesticide applicator first meeting the requirements for certification issued under any other federal or EPA-approved state or tribal certification plan with a contiguous boundary to the relevant area of Indian country. Private applicators can also become certified and recertified based on certification in another jurisdiction or through EPA-approved training. During the COVID-19 PHE, persons submitting their RUP certification applications may experience significant delays in receiving their federal certificate.

All certifications issued under the 2014 EPA Plan based on a certification issued by another jurisdiction will remain in effect as long as the underlying certification from a state, tribe, or other federal agency remains in effect. Any extension of a recertification period by the state, tribe, or other federal agency will apply to the EPA certification as well. Any private applicator certification issued by EPA without reliance on a certification from another jurisdiction and that was scheduled to expire on or after March 9, 2020, is granted an extension of six months from the date the certification was scheduled to expire. In either case, however, no certification issued under the 2014 EPA Plan shall continue to be in effect for longer than five years from date of issue.

V. Notice of Revisions and Termination of this Policy

Please note this policy is temporary, although EPA expects that it will remain in effect at least until EPA has reviewed the annual reports due December 31, 2020. However, EPA will continue to assess the need for and scope of this temporary guidance on an ongoing basis, and reserves the right to revise or terminate it, in whole or in part, whenever appropriate. In order to provide fair and sufficient notice to the public and certifying agencies, EPA will provide notice [here](#) under “Certifying Pesticide Applicators” at least seven days prior to revising or terminating this policy.

VI. Disclaimer

Nothing in this guidance is meant to replace or revise any EPA regulatory provisions of the CPA rule, or any requirements under other parts of the Code of Federal Regulations or FIFRA.