Revising Certification Plans to Meet the Requirements of the 2017 Certification of Pesticide Applicators Final Rule

Questions & Answers

February 2019

This document is designed for EPA regions, states, tribes and other federal agencies ("certifying authorities") to share EPA responses to some of the questions related to understanding the Part 171 rule revisions and the rule's requirements to submit revised plans to EPA by March 4, 2020. OPP anticipates issuing additional Questions and Answers to facilitate development of the plans. The questions and answers are organized by the following topics:

1. Timelines in the Rule and Required Deliverables
2. Plan Content/Requirements
3. Required Legal Authorities for Plan
4. Plan Submission and Review Process
5. Certification Standards and Recertification Standards
6. Noncertified Applicator Competency and Supervision
7. General Rule Provisions and Program Implementation

1. Timelines in the Rule and Required Deliverables

(A) Q: *Exactly what is needed from the certifying authorities by March 4, 2020? Please provide some templates and/or examples.*

A: By March 4, 2020, certifying authorities wanting to keep their existing EPA-approved plans in effect (during the time EPA reviews their submission and makes its determination), must submit to EPA revised certification plans documenting that their certification programs meet the 2017 rule requirements. If the certifying authority is relying on pending legislative and/or regulatory changes for full compliance, it must provide a detailed description of the changes and a timeline for completing all needed revisions. EPA intends to make available before the end of March 2019 a final certification plan template and checklist to support a consistent format and structure for plan development.

(B) Q: *Do Tribes have to comply with the March 4, 2020 date for applicator certification programs in Indian country?*

A: Yes. Tribes with a EPA-approved certification plan must comply with the same March 4, 2020 date for submission of a revised plan if they wish to continue to administer an applicator certification program. EPA intends to modify by March 4, 2020 the existing national EPA plan for Indian country for tribes to certify applicators through the EPA-administered plan. EPA will conduct a consultation with tribes on the revised EPA Plan for Indian country and anticipates it to occur in fiscal year 2019.

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(C) Q: *The timing of EPA's reconsideration of the minimum age requirement is a problem. Certifying authorities may need to go through rulemaking now for all changes except minimum age, followed by separate rulemaking later for only minimum age. Can certifying authorities go final with all changes by March 4, 2020, except minimum age?*

A: In January 2019, EPA withdrew the proposed rulemaking to reconsider the minimum age requirement. There will not be any changes to the minimum age requirements in the Certification of Pesticide Applicators federal regulation at 40 CFR 171.

(D) Q: *Do certifying authorities have until March 2020 to give EPA a proposed modification of their certification plan describing what changes they plan to make, and the timeframe for the changes?*

A: Yes. In order to keep an existing certification plan in effect, the certifying authority has to submit a proposed modification of its certification plan to EPA by March 4, 2020.

(E) Q: *What date can certifying authorities start submitting revised plans to EPA? Can a certifying authority submit a revised plan earlier than March 4, 2020?*

A: Certifying authorities may submit revised plans any time between now and March 4, 2020.

(F) Q: *EPA is developing a federal plan for tribes applying pesticides in Indian country. When is that expected to be completed and could it be considered a template and/or example for the States?*

A: EPA is developing a revised national certification plan for areas of Indian country not covered by any other EPA-approved certification plan that will be ready by March 4, 2020. The EPA Plan for Indian country is significantly different from state certification plans regarding legal authorities and enforcement.

2. Plan Content/Requirements

(A) Q: *The rule requires a written statement by the governor of the state designating a state agency responsible for administering the state certification plan. If the copy of the governor's "designation letter" contained in the current EPA-approved plan is still valid (i.e., the state agency designated in the letter is still the lead agency of record), can the State submit the same letter to meet the requirements of the rule?*

A: Yes. If an existing governor's designation letter is still valid and is consistent with the revised certification plan, submitting a copy of that existing letter is acceptable.

(B) Q: *The rule requires a written opinion from the state attorney general (AG) or legal counsel affirming that the lead agency and other cooperating agencies have the legal authority necessary to carry out the certification plan. If there are changes to state pesticide laws or regulations must the state lead agency submit a new written opinion or can it use the current one on file?*

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A: Certifying authorities must submit to EPA a new written AG or legal counsel opinion if the legal authority that supported the existing EPA-approved plan changes, or if the revised plan requires different legal authorities than the existing EPA-approved plan. NOTE: The new written opinion could reference an earlier opinion regarding authorities that are unchanged.

(C) Q: *What should the opinion from the state attorney general (AG) or the legal counsel look like? Are examples available?*

A: Certifying authorities may use their own format as there is no EPA-required form or format for written opinions. EPA can provide examples upon request of written opinions submitted with EPA-approved plans. EPA will work with Association of American Pesticide Control Officials (AAPCO) to identify a model(s).

(D) Q: *In a state with more than one applicator certification program (such as a state with a structural pest control program separate from the rest of the applicator certification program), is each agency responsible for part of a program required to submit a revised plan or does the lead agency submit one combined plan? Similarly, must such certifying authorities submit one letter from the attorney general and governor for each separate certification program or one letter for all certification programs?*

A: In accordance with FIFRA Section 11(a)(2)(A), the Governor must designate one state agency as responsible for developing, modifying, maintaining and administering the certification plan throughout the state. Since EPA expects each state to submit a single, comprehensive certification plan, it is appropriate that the certification plan also contain one letter from the governor and a single written opinion of the state attorney general or legal counsel for the state agency. The rule at § 171.303(b)(6) requires that the lead agency serve as the central point of contact on all issues related to the plan, coordinate activities and ensure consistent plan administration with all other agencies and organizations involved and submit one annual report.

(E) Q: *The rule says that if more than one agency or organization will be responsible for program functions, the certification plan must identify all such agencies and organizations, list their associated functions, and describe how all functions will be coordinated by the lead agency to ensure consistency on administrating the certification plan. Is there a strategy or model work plan outlining how the lead agency, Pesticide Safety Education Programs (PSEPs) and/or other cooperating agencies should support each other?*

A: EPA can work with the AAPCO to identify existing examples for use. However, it is up to each state lead agency to determine how to coordinate program functions and involve other agencies or cooperators, define their roles and ensure consistent administration (e.g., through a memorandum of agreement with the PSEP).

(F) Q: *Several new categories are required by the rule for specific applications/uses (e.g., soil and non-soil fumigation, aerial, predator control). If a state chooses not to implement a certification category could it accept applicator certifications in that category from other certifying authorities? If so, would this allowance have to be described in the state plan?*

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A: A state certification plan must include standards for a category to rely on another state's certification in that category. Section 171.303(a)(9)(ii) provides that where a state certifies applicators by relying on certifications issued by another State, it must examine the standards of competency used by the other state to determine whether the standards for a category are comparable to its own standards. Certifying authorities choosing to rely on another state certification to certify applicators must provide in the certification plan certain information about the conditions for such reliance (see § 171.303(a)(9)).

A state that foresees little need for a category may establish a limited use category, as authorized by § 171.303(a)(4). This provision reduces some of the burden associated with certifying small numbers of applicators for one use or product.

3. Required Legal Authorities for Plan

(A) Q: *Are there certain certification plan requirements in § 170.303 that can only be met with state statutory or regulatory requirements?*

A: Yes. Certifying authorities must provide a specific legal or regulatory citation demonstrating they have legal authority to satisfy each requirement in § 170.303(b)(7)(i)-(vii) and wherever the rule requires a citation, such as for certification standards.

(B) Q: *Do all certification plan elements required by § 171.303 need to be established in state laws and regulations, or are there elements that can be met with a written state policy that documents compliance? (Example: Can private applicator competency standards be established by policy?)*

A: No. EPA does not require <u>all</u> elements of a certification plan to be established through state laws and regulations. However, some elements must be established through state laws and regulations where explicitly required in the rule. For example, private applicator competency standards cannot be established by policy because the rule requires the state to provide, "A list and detailed description of all of the standards for certification of private applicators adopted by the state <u>and a citation to the specific state laws and/or regulations</u> demonstrating that the state has adopted such standards."

(C) Q: *The revised regulations at § 171.303(b)(7) require that certifying authorities now have legal authority to criminally convict pesticide applicators for a violation of their laws or regulations. Is there a guidance document on what criminal authority should look like and how to add it?*

A: No, EPA cannot provide guidance but can provide examples of criminal provisions from FIFRA or other state statutes. There is no set process for establishing criminal authority or for making any legislative or regulatory changes because it will vary according to the constitution, policies and procedures of the certifying authority. EPA will work with the Association of American Pesticide Control Officials (AAPCO) to identify appropriate models of criminal authority and examples of processes certifying authorities have used to add it.

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4. Plan Submission and Review Process

(A) Q: *Will EPA Regions have to complete their reviews of revised plans and make a determination by March 4, 2022 too?*

A: All certifying authorities must have a revised EPA-approved plan by March 4, 2022 to continue administering pesticide applicator certification programs. Therefore, EPA expects to have all plans reviewed and a determination made by that date.

(B) Q: *Will Certification Plan and Reporting Database (CPARD) be used to submit revised certification plans and annual reports*?

A: Certifying authorities should continue to use CPARD to submit annual certification accomplishment reports. However, because CPARD is not set up to enable editing or facilitate communications between multiple parties, EPA intends to use email and transmission of documents for review of revised certification plans. EPA intends to release an updated version of CPARD by late 2020 to house annual reports for 2021 and beyond. Previous records will always be accessible.

(C) Q: *Who will sign and send the final letters of EPA approval of revised certification plans?*

A: EPA regions will send approval letters to each state lead agency. The letters will be signed by EPA regional administrators with concurrence from the Assistant Administrator of the Office of Chemical Safety and Pollution Prevention (OCSPP) (See FIFRA Delegation 5-2, Appendix 1)

(D) Q: *Will EPA review and approve partial submissions of certification plans and/or regulatory changes?*

A: No. EPA will not approve partial plans or interim submissions. However, EPA anticipates an iterative and interactive process whereby EPA will provide feedback to certifying authorities on sections of proposed plans. An EPA Certification Plan Workgroup is preparing for this process and will ensure consistency on answers and decisions. In the meantime, EPA regions are available to work with certifying authorities on revisions to certification plans.

(E) Q: *Can EPA make "contingent approvals" on certification plans so the existing approved plan remains in effect until all changes are made and the revised plan is approved?*

A: Part 171 does not provide for "contingent approval." However, EPA's approval of a revised certification plan may allow some or all provisions of an existing approved plan to remain in effect until the state completes the measures specified in the approval letter and revised plan. See § 171.309(b).

(F) Q: *How many years can an existing approved plan, or parts of that plan, be allowed to remain in effect while a state completes measures to bring their plan into compliance with the rule and terms of the approval letter?*

A: Part 171 does not specify a limit. Per § 171.309(a)(4), EPA will approve a schedule for implementation of a revised certification plan, however schedules must be consistent with EPA's determination that new requirements of § 171.309(a) are necessary to prevent unreasonable adverse effects. In the preamble to

the final rule, EPA stated that it would take most certifying authorities two years from the date of EPA approval to fully implement their revised certification plans. It is possible that circumstances would require longer than 2 years for certain aspects of the plan, and EPA will make such decisions based on each case.

(G) Q: *Will EPA withhold approval of a revised certification plan until the state has made all the changes EPA requested? Does the state notify EPA when changes are complete before EPA can issue a final approval? What is the effective date of an approved revised plan?*

A: EPA's approval of a revised plan precedes implementation of the plan. EPA expects that before submitting a revised plan on March 4, 2020, the state and EPA will reach preliminary agreements on the plan changes and the associated schedule and timeframes for their completion that are likely to allow for EPA approval. The plan changes and schedule specified in EPA's final approval document must be implemented consistent with EPA's approval document for the plan approval to remain in effect. The regulation does not expressly require a state to notify EPA when it completes the implementation; however, failure to meet an implementation milestone could be a "substantial modification" for which § 171.309(a)(2) requires notification within 90 days. In addition, EPA could also include more specific reporting requirements among the conditions of approval.

(H) Q: *Describe how EPA will make its "equivalency determinations" for situations where the certifying authority's statutory or regulatory requirements for certain standards or regulatory authorities are not exactly like those contained in the Part 171 rule (i.e., how will EPA make the determination whether the plan's requirements will meet or exceed EPA's requirements?).*

A: EPA Regions will coordinate with the relevant experts from the appropriate offices [Office of Pesticide Programs (OPP), Office of Enforcement and Compliance Assurance (OECA), and the Office of General Counsel (OGC)] to review and compare the statutory and regulatory authorities and citations for each certification plan submission. The state attorney general or legal counsel opinion and other supporting documentation submitted with the plan will also be reviewed. EPA intends to work with certifying authorities where there are differences. EPA will then decide whether the expected protections of the state will meet or exceed those required by the EPA's revised Part 171 rule. The state has the right to challenge a decision, as § 171.309(a) provides that "the Agency shall give the certifying authority submitting a certification plan notice and opportunity for an informal hearing before rejecting the plan, however, EPA hopes that early consultation and collaboration will produce approvable certification plans.

(I) Q: *Are plans approved only upon publication of a Federal Register Notice (FRN)? Will EPA publish a FRN as each state certification plan is approved, or wait and publish one for multiple plan approvals?*

A: EPA will issue a letter of approval for each approved certification plan. Each plan will be reviewed and approved on its own timeline based on the date of submission. EPA is required to publish a FRN only for public comment on proposed certification plans administered by EPA.

5. Certification and Recertification Standards

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(A) Q: *Must a state have regulatory text identical to EPA's Part 171 for competency standards of the same or similar categories? What about situations where EPA does not have a comparable category or competency standard?*

A: The rule provides that certifying authorities may adopt their own standards and categories. For certifying authorities, § 171.303(b)(2) says: "The application for Agency approval of a state certification plan must contain satisfactory documentation that the state standards for the certification of commercial applicators meet or exceed those standards prescribed by the Agency under §§ 171.101 and 171.103. Such documentation must include one of the following: (i) A statement that the state has adopted the same standards for certification of commercial applicators prescribed by the Agency under §§ 171.101 and 171.103 and a citation of the specific state laws and/or regulations demonstrating that the state has adopted such standards; [or] (ii) A statement that the state has adopted its own standards that meet or exceed the standards for certification of commercial applicators prescribed by the Agency under §§ 171.101 and 171.103. If the state selects this option, the application for Agency approval of a state certification plan must include all of the following…"

The rule goes on to specify the information the state must submit for EPA to determine if its standards meet or exceed EPA's required standards. When the state standards do not use text identical to the federal regulation, EPA may approve plans provided the "equivalency determination" is made that the state plan will provide essentially equivalent protections as the federal rule or standards (i.e., the state plan will result in protections that meet or exceed those provided by the EPA rule).

In addition, § 171.303(a)(2) describes how certifying authorities may adapt the certification categories listed in § 171.101:

> (i) A State certification plan may omit any unneeded certification categories.
>
> (ii) A State certification plan may designate subcategories within the categories described in §§ 171.101 and 171.105(b) through (f) as it deems necessary.
>
> (iii) A State certification plan may include additional certification categories not covered by the existing Federal categories described in §§ 171.101 and 171.105(b)-(f).
>
> (iv) A State certification plan may combine the categories described in § 171.101(m) through (n) into a single general fumigation category for commercial applicators.
>
> (v) A State certification plan may combine the categories described in § 171.105(d) through (e) into a single general fumigation category for private applicators.

(B) Q: *Must applicators with existing certifications meet new certification and recertification standards under the revised plan (i.e., will they be allowed to be "grandfathered in" when program requirements change)?*

A: Existing certifications cannot be "grandfathered in" in a permanent sense, but EPA expects that many revised certification plans will provide for a brief transition period where some or all certifications issued under the former plan remain in effect. After a revised plan takes effect, all applicators certified under the former plan must be newly certified or recertified in accordance with the requirements of the revised certification plan. Certifying authorities will decide whether applicators certified under the

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former plan have to meet the new certification requirements immediately or upon expiration of their certification, and whether those applicators will require a new certification (either the same procedure as for a first-time applicant or a streamlined procedure that accounts for the certification under the previous plan) or a recertification (and in that case, whether as a regular recertification or a one-time enhanced recertification). A certifying authority could adopt a non-examination recertification process for applicators certified under the former plan if the process ensures applicators will meet the new certification standards. The state must explain in the revised certification plan how such a process would meet the rule's requirements.

(C) Q: *§ 171.103(d) states in part, "Examinations... must be based on the standards of competency specified in paragraphs (d)(1) through (15) of this section." Likewise, § 171.105, Standards for certification of private applicators, states in paragraph (a), "Persons seeking certification as private applicators must demonstrate practical knowledge of the principles and practices of pest control...including all of the following" before listing the standards. It appears in both cases that the rule is defining general standards upon which exams should be based rather than listing specific items that must appear on an exam. However, § 171.103(c), Core standards for all categories of certified commercial applicators, states "Written examinations for all commercial applicators must address the following areas of competency..." and then lists topics. Our question is whether this section is defining the standards on which core exams are to be based or is it a listing the topics that must appear in items on a Core exam. Please clarify whether the language in the rule is meant to define standards on which certification exams are based or if it is meant to list specific topics that must appear in items on certification exams. Please clarify which interpretation is correct.*

A: The rule defines competency standards on which certification exams (or non-examination alternatives) should be based and they are not meant as a list of specific topics that must appear in certification exams. This interpretation is consistent with the clearer wording in both § 171.103(d) and § 171.105(a), and the fact that § 171.103(c) is entitled "Core standards" rather than "Core exam items."

(D) Q: *§ 171.107(b)(2)(iii) says, "A certifying authority must ensure that any continuing education course or event, including an online or other distance education course or event, relied upon for applicator recertification includes a process to verify the applicator's successful completion of the course or event." What does EPA require a state have in place to verify a person's participation in online training or online testing? Some certifying authorities put the burden on the sponsor of the online course provider.*

A: EPA does not require any specific process or procedure to meet the requirements of § 171.107(b)(2) to verify the applicator's successful completion of the course or event. The certifying authority bears the responsibility for deciding what process or procedures will adequately ensure the integrity of its certification process. If a certifying authority allows third party outside cooperators to provide recertification training, the certifying authority is responsible for ensuring the cooperator meets the requirements and conditions of the approved plan. EPA will work with the AAPCO C&T workgroup and the American Association of Pesticide Safety Educators (AAPSE) to identify existing examples of processes that state lead agencies, PSEPs or other trainers are using to verify applicator completion of online, remote access, or other training programs that could potentially be used as models.

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(E) Q: *When do certifying authorities need to ensure that certification exams meet the new exam standards?*

A: The Certification rule contains no deadline for implementation of modified certification plans, such as updating certification exams. EPA will base each certifying authority's implementation period on the particular circumstances of that jurisdiction and the requests from the certifying authority but anticipates that most certifying authorities will be allowed two years from the date of EPA approval to fully implement their revised certification plans. Certifying authorities should include in their modified plans a proposed schedule to bring exams and other aspects of their certification program up to the required standards.

(F) Q: *Is there a requirement in the revised rule, or an expectation by EPA, that certifying authorities must submit copies of their certification exams to EPA for review along with revised certification plans? Is EPA going to review exams to determine whether exams adequately address competency standards? How will EPA determine whether state certification exams and the certification process meet the required standards?*

A: No, there is no requirement or expectation that certifying authorities submit certification exams to EPA for review during or after the plan approval process. However, certifying authorities must provide along with revised plans satisfactory documentation that their certification and recertification standards meet or exceed those prescribed by the Agency under §§ 171.101 and 171.103. For exams, certifying authorities must describe the processes and procedures used to develop and administer, maintain integrity, and ensure they are updated as needed. The rule does not prescribe specific standards regarding exam development. If there is any reason to believe any processes or procedures are inadequate, EPA may request more documentation (including copies of exams) to ensure that certifying authorities' programs meet the required standards.

(G) Q: *Other than written examination/testing, what are other ways certifying authorities could use to determine private applicator competency that would meet the standards and be acceptable to EPA?*

A: The two most common alternatives to written examinations are hands-on training or in-person performance testing. EPA would need proposals to consider other alternatives. EPA, AAPCO and the American Association of Pesticide Safety Educators (AAPSE) can help identify existing examples of other models and alternatives.

6. Noncertified Applicator Competency and Supervision

(A) Q: *Could certifying authorities have a certification plan that permits annual safety training online for noncertified handlers?*

A. Yes, online training (interactive or prerecorded) could be used to satisfy the training requirement for noncertified applicators if all conditions of the § 171.201(d) training requirements are met.

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(B) Q: *Are "apprentices" and "technicians" considered "noncertified applicators"? If the state chooses to require apprentices or technicians to take courses and have on the job training, are they also required to have annual training as well under the revised plan? If the state plan requires apprentices to take and pass a core exam every third year, would that be sufficient to meet the 171 standards for noncertified applicator competency? Will EPA approve certifying authorities' requirements for noncertified applicators on a case by case basis?*

A. Part 171 does not define or specifically address "apprentices" or "technicians", and those terms might have different meanings in different states or jurisdictions. Any person who is not certified for a certain use category and is using a restricted use pesticide (RUP) under the supervision of a certified applicator is considered a "noncertified applicator". It is possible that state (or other jurisdiction) requirements for "apprentices" and "technicians" would fulfill some or all of part 171 requirements for certified applicators or for noncertified applicators who may use RUPs under the direct supervision of a certified applicator, but that is a question that would be addressed case-by-case in the development and review of a certification plan.

(C) Q: *May a certifying authority propose in its certification plan that noncertified applicators qualify to apply RUPs under the supervision of a certified applicator by obtaining CEUs in lieu of annual training? If so how would that be tracked and recorded?*

A: Yes, in principle. It is possible to develop continuing education programs that would meet or exceed the standards in § 171.201(d), or alternatively, that would meet or exceed the training requirements for WPS agricultural handlers under 40 CFR 170.501. The certifying authority must ensure that the process chosen to qualify noncertified applicators to apply RUPs has adequate tracking mechanisms and verification procedures to ensure the intended protections are provided.

(D) Q: *§171.201(b)(1)(ii) states that <u>supervisors</u> of non-certified applicators must be certified in the category applicable to the supervised application. However, §171.201(d)(2)(i) seems to allow the possibility that a certified applicator can <u>train</u> a non-certified applicator who will apply pesticides outside of the trainer's certification category (e.g., a person certified only in structural pest control can train---but not supervise---a non-certified applicator who will be making turf applications). Is this correct?*

A. Yes, a person certified in one category can provide training to a noncertified applicator for any category of use. The qualifications required for noncertified applicators in 171.201(c) are general, and not category-specific. All pesticide applicators demonstrate through the certification process an understanding of the same core concepts required in noncertified applicator training. Therefore, all certified applicators, regardless of category, should be competent to provide general RUP safety training. On the other hand, an applicator must be certified in a category pertaining to the restricted use pesticide use to supervise a noncertified applicator.

(E) Q: *May a certifying authority require noncertified applicators be "licensed" in lieu of annual training? (e.g., if a State requires a Core license)? Do "licensed" noncertified applicators have to take annual training?*

A: Yes, in principle. Section 171.201(c) requires that a noncertified applicator meet at least one of the following qualifications:

(1) The noncertified applicator has been trained in accordance with 171.201(d) within the last 12 months.
(2) The noncertified applicator has met the training requirements for WPS agricultural handlers under 40 CFR 170.501 within the last 12 months.
(3) The noncertified applicator has met training standards that meet or exceed the standards in § 171.201(d).
(4) The noncertified applicator is currently a certified applicator but is not certified to perform the type of application being conducted or is not certified in the jurisdiction where the use will take place.

Per § 171.201(c)(3), a certifying authority could require "licensing "of noncertified applicators in lieu of annual training if it demonstrates that such a program meets or exceeds the standards in § 171.201(d). For example, the certifying authority could require noncertified applicators to pass the commercial core exam (but not a commercial category exam for applicator certification) every three years. For a licensing program that significantly exceeds the standards in § 171.201(d), EPA might approve a less frequent (e.g., 2 years or more) renewal period. However, if a program does not exceed but meets the standards in § 171.201(d), it should be an annual program.

(F) Q: *Is the certifying authority required to establish a limit to the number of noncertified applicators that can be under the direct supervision of a certified applicator?*

A: No. EPA did not establish a maximum number of non-certified applicators that may use RUPs while under the supervision of a single certified applicator. (See page 995 of the preamble to the final rule for a full discussion on the decision.)

(G) Q: *Do certifying authorities have to require that both commercial and private certified applicators keep records of noncertified applicator training?*

A: No. FIFRA section 11(d) prohibits EPA from requiring private applicators to keep records. Therefore, Part 171 does not require any private applicator recordkeeping. However, § 171.201(e) requires commercial applicators to keep records of noncertified applicator training.

7. General Rule Provisions and Program Implementation

(A) Q: *What efforts are being made to provide SLAs and PSEP additional funding to implement the program, including funding for developing new exams and training materials (for all categories, not just the new application-specific categories)?*

A: At this point, EPA does not have additional funds to implement the program beyond what is provided in State and Tribal Assistance Grants (STAG) and cooperative agreements. EPA provides funds in support of C&T program implementation and plan revisions through FIFIRA program implementation STAG to all SLAs for C&T program implementation and two cooperative agreements. EPA funds a cooperative agreement with UC Davis in collaboration with Oregon State University (Pesticide Educational Resources Collaborative or PERC) primarily for materials development such as certification training and exam

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materials. EPA also funds a cooperative agreement with the Extension Foundation to distribute funds to Pesticide Safety Education Program (PSEP) for applicator education and training programs.

(B) Q: *Certifying authorities recommend development of a video that is suitable and content relevant to train non-certified, non-agricultural pesticide applicators. Will EPA provide such a video resource?*

A: EPA is aware of the need for this resource and will consider options for developing it. One such option is the Pesticide Educational Resources Collaborative (PERC) which relies on its advisory board to choose projects for development. PERC has a video project for training noncertified, non-agricultural pesticide applicators on the list of projects to consider developing in 2019.

(C) Q: *The rule assigns supervising certified applicators responsibility for equipment maintenance and operation. What type of documentation is required? Is this supposed to be another component of record keeping?*

A. The supervising certified applicator must ensure before each day's use that the equipment is in proper operating condition and can be used safely. There is no associated recordkeeping requirement in EPA's regulation. (See§ 171.201(b)(3)(iv)).

(D) Q: *Who is responsible for keeping records on the training of non-certified applicators?*

A. Sections § 171.201(e)(3) and § 171.303(b)(7)(vi) require that records of the training of non-certified applicators be accessible at the supervising commercial applicator's principal place of business for two years from the date the noncertified applicator used the restricted use pesticide. This recordkeeping requirement is not applicable to private applicators because EPA cannot require recordkeeping for private applicators. (See FIFRA section 11(d)).

(E) Q: *Will Certifying authorities be required to track and report in CPARD the number of noncertified applicators that are trained annually?*

A: No. The rule does not require certifying authorities to track or report on the number of noncertified applicators trained annually.

(F) Q: *The rule at § 171.201(b)(3)(i) requires the certified applicator to ensure that the noncertified applicator has access to the applicable product labeling at all times during the pesticide application. Does EPA define what "access to the applicable product labeling" means? Does it have to be a paper copy or can it be on an electronic device, such as a tablet?*

A: No, EPA does not require access to a paper copy of product labeling. The certified applicator must ensure that the noncertified applicator has a means to access the labeling at the use site at all times during use of an RUP, especially in case of an emergency. EPA believes that this could be achieved through non-paper media.

(G) Q: *Each State has its own political climate. SLAs and PSEPs will need resources ($$) to implement the program and all certifying authorities will need to effectively communicate the changes. Note that outreach articles and news releases could be used by certifying authorities and extension in newsletters, regional publications and other methods to reach the regulated community. Outreach support could also be used by trade*

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groups, grower association and other stakeholders to amplify the message. Will OPP provide articles, news releases and other outreach support to help the certifying authorities?

A: Changes to state, tribal and federal agency certification programs will be varied and occur on different timelines. However, EPA will discuss options with certifying authorities on how we can support their outreach and communications needs.

(H) Q: *EPA HQ has stated they want to know about significant incidents like the recent reports of dicamba and methyl bromide drift, etc. Is there already a place in CPARD to report this? Has EPA issued guidance on reporting expectations? Is this the kind of information EPA is seeking for "Program Reporting and Accountability: A summary of enforcement activities related to the use of RUP's."?*

A: Yes, the regulation at § 171.303(c) requires that certifying authorities submit as part of the annual report a summary of enforcement activities related to the use of RUPs during the last 12 month reporting period. Certifying authorities submit summaries, not specific incidents, through the Certification Plan and Reporting Database (CPARD) under "Enforcement Feedback". EPA has issued guidance on how to report on this element in "Instructions and Tips for Certifying Authorities on Completing the Annual C&T Reporting in CPARD", issued in 2010 and revised in December 2014. Please note that this reporting requirement is not new to the revised federal regulation.

(I) Q: *If applicators in our State take a core exam first, then a category exam, do we need to review the content (compared to federal competency standards) of all exams or core exams only? (Example: State's commercial applicators must have core license for 2 years before obtaining commercial applicator license.)*

A: Core competency exams must meet the standards of §171.103(c), and category competency exams must meet the standards of §171.103(d). Certifying authorities will need to incorporate the competency standards in their certification and recertification program requirements and can do so according to the timeline proposed to EPA with revised certification plans.

(J) Q: *Reiterate the category requirements for the aerial, fumigation and predator control categories (i.e., must applicators also be certified in the "use category" associated with the specialized application they are making? (e.g., if an aerial applicator is applying to crops must he also be certified in the Agricultural Plant category or is the aerial category certification sufficient?)) Do you anticipate any exceptions?*

A: In the final rule, soil fumigation, non-soil fumigation, aerial application, sodium cyanide predator control, and sodium fluoroacetate predator control are each a complete certification category and no additional category certification is required. If a commercial applicator is certified in any one of the 15 federal commercial applicator certification categories identified in §171.101 (including the categories soil fumigation, non-soil fumigation, aerial application, sodium cyanide predator control, and sodium fluoroacetate predator control), then he/she would be eligible to use RUPs in the category in which he/she has completed certification. A certifying authority may require certification in two or more categories, however.

Appendix 1

EPA Delegation of Authority

1200 TN 462
04/06/1998

FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (FIFRA)

5-2. Certification of Pesticide Applicators

1. **AUTHORITY.** To perform EPA functions and responsibilities relative to certification of Pesticide Applicators as set forth in Section 11 of FIFRA, and to issue corresponding Federal Register Notices.

2. **TO WHOM DELEGATED.** The authorities pertaining to:

   a. Certification of Pesticide Applicators, the approval, disapproval and withdrawal of approval for Certification and Training Plans, and the issuance of corresponding Federal Register Notices are delegated to:

      1) Regional Administrators for State Plans; and

      2) the Assistant Administrator for Chemical Safety and Pollution Prevention for Federal Agency Plans.

   b. Prescribing Federal standards for the certification and training of Pesticide Applicators as set forth in FIFRA Section 11(a)(1) is delegated to the Assistant Administrator for Chemical Safety and Pollution Prevention.

3. **LIMITATIONS.**

   a. With regard to State Plans, the Regional Administrators will:

      1) forward, upon receipt, copies of all State Plans to the Assistant Administrator for Chemical Safety and Pollution Prevention or his/her designee for review and concurrence;

      2) forward to the Assistant Administrator for Chemical Safety and Pollution Prevention or his/her designee for review and concurrence, any Federal Register notice pertaining to an intended or final action regarding any State Plan prior to signing any such notice; and

      3) forward to the Assistant Administrator for Chemical Safety and Pollution Prevention or his/her designee for review and concurrence, any notice or order withdrawing approval of a State Plan under FIFRA Section 11(b)prior to signing any such notice or order. .

   b. With regard to Federal Plans, the Assistant Administrator for Chemical Safety and Pollution Prevention will:

      1) notify the Administrator or his/her designee five days prior to signing a Federal Register notice pertaining to intended or final action regarding any Federal Agency Plan; and

2) notify the Administrator or his/her designee five days prior to signing any notice or order withdrawing approval of any Federal Agency Plan.

4. REDELEGATION AUTHORITY.

a. The authorities delegated to the Assistant Administrator for Chemical Safety and Pollution Prevention for the approval of a Federal Plan and the issuance of corresponding Federal Register Notices may be redelegated to the Division Director level or equivalent and these authorities may not be redelegated further. If the authority is redelegated, all officials in the management chain of the redelegatee retain the authority to exercise the delegated duties.

b. The authorities delegated to the Regional Administrators may not be redelegated.

c. With regard to Federal Plans, the Assistant Administrator for Chemical Safety and Pollution Prevention may:
determine that the National Program Office or an appropriate Regional office shall administer an approved federal plan consistent with the directives of the Assistant Administrator. If the authority is redelegated, the Assistant Administrator for Chemical Safety and Pollution Prevention and all officials in the management chain of the redelegatee retain the authority to exercise the delegated duties.

5. ADDITIONAL REFERENCES. None.

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