

Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 25, 2020.

Gregory Sopkin,

Regional Administrator, Region 8.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 171

[EPA-HQ-OPP-2011-0037; FRL-10005-59]

EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides Within Indian Country; Proposed Revisions; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing proposed revisions to the EPA-administered federal pesticide applicator certification plan to certify applicators of restricted use pesticides in areas of Indian country that are not covered by any other EPA-approved certification plan. After this proposed plan is finalized and implemented, certification of applicators in Indian country will be administered by EPA, unless a tribe submits its own tribal certification plan, enters into a tribal-EPA agreement, or opts out of the revised EPA Plan. EPA is soliciting comments on EPA's proposed revisions to the federal certification plan in Indian country where no other EPA-approved plan applies.

DATES: Comments must be received on or before June 1, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2011-0037, 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.

- *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, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Jackie Mosby, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (703) 305-7102; email address: Mosby.Jackie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an individual or business that is seeking certification to apply restricted use pesticides (RUPs), as defined under section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136a *et seq.*) and 40 CFR part 152, subpart I, in areas of Indian country where no other EPA-approved plan applies. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. You may be potentially affected by this action if you are: A state lead agency (SLA), tribe, or federal agency who administers a certification program for pesticides applicators or a pesticide safety educator; or other person who provides pesticide safety training for pesticide applicator certification or recertification. This document also addresses EPA's work on a government-to-government basis with tribes (see Unit VIII.). If you have any questions regarding the applicability of this action to a particular entity, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark

the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. What action is the Agency taking?

EPA is announcing its proposed revisions to the EPA-administered federal pesticide applicator certification plan (EPA Plan) to certify applicators of RUPs in Indian country and seeks public comment. This proposed EPA Plan describes the process by which EPA will implement a program for the certification of applicators of RUPs in areas of Indian country based upon the certification requirements enumerated at 40 CFR part 171. The proposed EPA Plan, in its entirety, is included in the docket (Ref. 1).

III. What is the Agency's authority for this plan?

The proposed EPA Plan will be implemented under the authority of FIFRA section 11(a)(1), and in accordance with the regulations found at 40 CFR 171.307(c) and 171.311. Additional enforcement authorities are found in FIFRA sections 8, 9, 12, 13, 14, and 23.

IV. Background

Under FIFRA, EPA has the authority to classify registered pesticides as either "restricted use" or "general use." Pesticides (or a particular use or uses of a pesticide) that may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, shall be classified for "restricted use." FIFRA section 3(d)(1)(C), 7 U.S.C. 136a(d)(1)(C). If the classification is made because of hazards to the applicator, the pesticide may only be applied by or under the direct supervision of a certified applicator. FIFRA section 3(d)(1)(C)(i), 7 U.S.C. 136a(d)(1)(C)(i). If the classification is

made because of potential unreasonable adverse effects on the environment, the pesticide may only be applied by or under the direct supervision of a certified applicator or subject to such other restrictions as the Administrator may provide by regulation. FIFRA section 3(d)(1)(C)(ii), 7 U.S.C. 136a(d)(1)(C)(ii). To be certified, an individual must be determined to be competent with respect to the use and handling of pesticides covered by the certification. FIFRA section 11(a), 7 U.S.C. 136i(a).

It was the intent of Congress that persons desiring to use RUPs should be able to obtain certification under programs approved by EPA, as reflected in FIFRA sections 11 and 23. 7 U.S.C. 136i, 136u. The regulations addressing federal agency, state, and tribal development and submission of certification plans to EPA are contained at 40 CFR part 171. It is EPA's position that federal agency, state, and tribal plans are generally best suited to the needs of that particular federal agency, state, or tribe and its citizens. States and tribes, however, are not required to develop their own plans. Where EPA has not approved a state or tribal certification plan, the Agency is authorized to implement a plan administered by EPA for the federal certification of applicators of RUPs pursuant to FIFRA section 11.

In 2014, EPA announced the finalization and implementation of an EPA-administered certification plan for Indian country (2014 EPA Plan) (Ref. 2). The 2014 EPA Plan described the process by which EPA would implement a program for the certification of applicators of RUPs in Indian country based upon the certification requirements enumerated at 40 CFR part 171 at the time. The entire 2014 EPA Plan is available in Docket ID No. EPA-HQ-OPP-2011-0037 at <http://www.regulations.gov>.

In 2017, EPA published a final rule (2017 Rule) updating the regulation at 40 CFR part 171 concerning the certification of RUP applicators (Ref. 3). The 2017 Rule ensured that federal certification program standards adequately protect applicators, the public, and the environment from risks associated with use of RUPs. The 2017 Rule sought to improve the competency of certified applicators of RUPs, to increase protection for noncertified applicators using RUPs under the direct supervision of a certified applicator through enhanced pesticide safety training and standards for supervision of noncertified applicators, and to establish a minimum age requirement for certified and noncertified applicators

using RUPs under the direct supervision of a certified applicator.

Recognizing EPA's commitment to work more closely with tribal governments to strengthen environmental protection in Indian country, the 2017 Rule provided more practical options for establishing certification programs in Indian country. The 2017 Rule offers three options for tribes to establish valid EPA-recognized/approvable certification programs in Indian country, along with a fourth "opt-out" option, all which are detailed in Appendix A of the "Tribal Certification Plan Outline" document (Ref. 4). The three options for establishing a certification mechanism are as follows:

1. *Tribal Reliance on Certifications Issued by Specified Jurisdictions (Tribal-EPA Agreement):* A tribe may establish a certification plan with the relevant EPA region(s) through a written agreement per 40 CFR 171.307(a) where the tribe specifies certain federal agencies, states, and/or tribes whose certified applicators will be authorized to use RUPs in the tribe's areas of Indian country. The nature and extent of a tribe's role in implementing a 40 CFR 171.307(a) plan will be negotiated with the appropriate EPA region and specified in the written agreement.

2. *Certifications Issued by a Tribe (Tribal Certifications):* A tribe may choose to submit its own new or revised certification plan to the appropriate EPA region for approval per 40 CFR 171.307(b). A tribal certification plan needs to demonstrate that the plan meets all requirements of 40 CFR 171.303 applicable to state certification plans, except that the tribe's plan will not be required to meet the requirements of 40 CFR 171.303(b)(6)(iii) with respect to provisions for criminal penalties, or any other requirements for assessing criminal penalties.

3. *EPA-administered Certification Plan (EPA Plan):* In any area of Indian country not covered by a certification plan established under either option 1 or 2, the Agency will implement the proposed EPA Plan once it is finalized as provided in 40 CFR 171.307(c), except where a tribe has elected to opt out. Under the EPA Plan, the Agency would be responsible for certifying private and commercial applicators to use or supervise the use of RUPs. Tribes may impose additional restrictions or requirements on use of RUPs through tribal codes, laws, regulations or other tribal procedures, but would not generally be involved in the certification process. The existing 2014 EPA Plan will remain in full effect until the

proposed EPA Plan under this option is finalized, no later than March 4, 2022. Once finalized, some components of the 2014 EPA Plan may remain in effect while EPA prepares to implement the revised EPA Plan.

A fourth option for tribes is the ability to opt out of the proposed EPA Plan for Indian country. If a tribe chooses to opt out, the Agency will not implement the proposed EPA Plan in the area of Indian country where the chairperson or equivalent elected leader of the relevant tribe provides the Agency, during the comment period initiated by this Notice, a written statement of the tribe's position that the proposed EPA Plan should not be implemented per 40 CFR 171.307(c)(2). EPA's website will have additional information on the process of opting out of the proposed EPA Plan after the comment period ends (<https://www.epa.gov/pesticide-applicator-certification-indian-country>).

Currently, most of Indian country is covered by the 2014 EPA Plan. EPA expects that most areas of Indian country will choose to continue being covered by the 2014 EPA Plan and by the proposed EPA Plan once it is finalized. Tribes that choose to continue to be covered by the EPA-administered Plan for Indian country do not need to notify EPA. Tribes that are currently covered by the 2014 EPA Plan that intend to develop either a certification plan or a tribal-EPA agreement can do so at any time and are not bound by the March 4, 2020 deadline in order to remain covered under the 2014 EPA Plan.

There are four tribal certification plans that received approval under 40 CFR 171.10(a)(2) prior to the 2017 Rule—those for the Three Affiliated Tribes of the Fort Berthold Indian Reservation, the Cheyenne River Sioux Tribe, the Rosebud Sioux Tribe, and the Shoshone-Bannock Tribes of the Fort Hall Reservation. EPA also implemented a separate federal plan for the Navajo Nation prior to the 2017 Rule. In addition, EPA is aware of three tribes, the Santee Sioux Tribe of Nebraska, the Prairie Band Potawatomi Nation, and the White Earth Band of Chippewa Indians, that entered a Memorandum of Understanding with a state pursuant to 40 CFR 171.10(a)(1) prior to the 2017 revisions to 40 CFR part 171. EPA is aware that among these tribes there are some tribes that plan to submit revised certification plans in accordance with the new regulations at 40 CFR 171.307(a) or (b). Tribes with an existing certification plan that do not submit a revised certification plan by March 4, 2020 will be covered by the 2014 EPA Plan until the proposed EPA Plan is

finalized and implemented, unless a tribe decides to opt out of the proposed EPA Plan.

V. Summary of the Proposed EPA Plan

EPA is proposing a new EPA Plan for those areas of Indian country not covered by any other EPA-approved certification plan. This proposed EPA Plan provides for the certification of applicators of RUPs, references for training noncertified applicators who use RUPs under the supervision of a certified applicator, pesticide dealer reporting and recordkeeping, and enforcement consistent with the requirements of 40 CFR part 171. EPA will administer routine maintenance activities associated with implementing this plan, including application processing, database management and recordkeeping, and will conduct inspections and take enforcement actions as appropriate. The final revisions to the proposed EPA Plan will be made after the results of the tribal consultation and public comments are taken into consideration. Once finalized and fully implemented, the revised EPA Plan will supersede all previous versions of the EPA Plan, including the version published on February 6, 2014. Implementation of the EPA Plan once finalized may be staggered based on when each section of the finalized plan is brought into compliance.

A. Area(s) of Indian Country To Be Covered by the Proposed Plan

EPA intends to implement this Federal certification plan in "Indian country," as defined at 40 CFR 171.3, where no other EPA-approved plan applies, and where tribes have not "opted-out" of coverage under the proposed EPA Plan. "Indian country" is defined at 40 CFR 171.3 as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The definition of *Indian country* in 40 CFR 171.3 is identical to the definition of that term in 18 U.S.C. 1151.

Consistent with the statutory definition of *Indian country*, as well as

federal case law interpreting this statutory language, EPA treats lands held by the federal government in trust for Indian tribes that exist outside of formal reservations as informal reservations, and thus as Indian country.

B. Proposed Procedures and Requirements for Private Applicator Certification and Recertification

EPA is proposing to continue to make available two options for private applicators seeking a federal certificate under the proposed EPA Plan.

1. *Option to submit documentation of a currently valid certificate.* Consistent with the 2014 EPA Plan, a private applicator seeking federal certification under this option must submit documentation of a currently valid certificate as a private applicator authorized to apply federally-designated RUPs through an EPA-approved certification plan for a state or tribe with a contiguous boundary to the relevant area of Indian country along with a completed Pesticide Applicator Certification Form.

The applicator may submit certificates from multiple jurisdictions, if necessary, to support a certification pursuant to the proposed EPA Plan that covers multiple areas of Indian country that are located within different states within a region. If an applicator seeking federal certification is unable to obtain certification through an adjacent state or tribal program, the applicator may submit documentation of certification from another state or tribal program. EPA will determine whether to waive further demonstration of competency based on verification that the use conditions and pest pressures in the area where the applicator is certified are similar to where the applicator intends to apply.

a. *Duration of certificate.* Federal certificates for private applicators under this option will expire at the expiration date of the underlying certificate, or on the date the certificate is suspended or revoked, whichever is earlier.

b. *Renewal/recertification.* Private applicators must complete the recertification requirements of the underlying state or tribe's certificate and submit documentation.

2. *Option to complete the EPA training course.* Private applicators seeking federal certification under this option will need to submit documentation of completion of the EPA training course along with a completed Pesticide Applicator Certification Form. While the framework of this option is consistent with the 2014 EPA Plan, identification

verification has been enhanced and the current EPA training course will be revised to be in compliance with 40 CFR part 171. Private applicators will receive a general federal certificate; however, a private applicator with a federal certificate under this option alone is not sufficient to authorize the purchase, use, or supervision of the use of the RUP in the categories of sodium cyanide predator control, sodium fluoroacetate predator control, soil fumigation, non-soil fumigation, and aerial pest control. Additional certificates will be needed for those categories. Private applicators seeking to obtain a federal certificate to apply sodium cyanide and sodium fluoroacetate in Indian country under this proposed EPA Plan should refer to Unit V.D. for more information.

a. Duration of certificate. Private applicator federal certification by EPA under this option expires after one year.

b. Renewal/recertification. For recertification, private applicators seeking a federal certificate under this option must satisfactorily complete EPA's online course during the six months preceding the expiration of their current certificate. Recertification through this option expires after one year.

C. Proposed Procedures and Requirements for Commercial Applicator Certification and Recertification

EPA is keeping the option for commercial applicators to obtain a federal certificate by submitting documentation of a currently valid certification as a commercial applicator authorized to use federally designated RUPs through an EPA-approved federal agency plan, or an EPA-approved state or tribal certification plan with a contiguous boundary to the relevant areas of Indian country. EPA may issue federal certificates to persons who are certified as commercial applicators for the same categories listed in their underlying certificate, except for the sodium cyanide and sodium fluoroacetate predator control categories (see Unit V.D.).

The applicator may submit certificates from multiple jurisdictions, if necessary, to support a certification pursuant to the proposed EPA Plan that covers multiple areas of Indian country that are located within different states within a particular EPA region. If an applicator seeking federal certification is unable to obtain certification through an adjacent state or tribal program, the applicator may submit documentation of certification from another state or tribal program. EPA will determine whether to waive further demonstration of

competency based on verification that the use conditions and pest pressures in the area where the applicator is certified are similar to where the applicator intends to apply.

1. Duration of certification. For commercial applicators, a federal certificate issued by EPA for commercial applicators under this proposed EPA Plan expires at the expiration date of the underlying certificate, or on the date the certificate is suspended or revoked, whichever is earlier.

2. Renewal/recertification. For recertification, commercial applicators must complete the recertification requirements of the underlying federal agency, state, or tribe's certificate and submit documentation of the currently valid certificate.

D. Proposed Categories for Certification

EPA expects that most, if not all, applicators certified under the proposed EPA Plan will already be certified according to the categories and standards of a jurisdiction adjacent to the particular areas of Indian country. Where an applicator seeks certification under the proposed EPA Plan in reliance on another jurisdiction's certification that differs from the categories in 40 CFR 171.101 and 171.105, the certification will be limited to the scope of the underlying certification. Where EPA issues original certification to private applicators, the categories and standards of 40 CFR 171.105 will apply.

EPA is proposing to keep the predator control categories available: Sodium cyanide capsules used with ejector devices and sodium fluoroacetate used in livestock protection collars. A federal certificate will only include these two predator control categories if:

- The relevant Indian tribe for the area of Indian country at issue has obtained its own registrations for the products within these two categories and conducts its own monitoring and supervision, or
- A federal employee has a valid underlying state certificate for these categories.

E. Pesticide Dealer Reporting and Recordkeeping Requirements

EPA proposes that each RUP retail dealer in areas of Indian country where the proposed EPA Plan will apply must keep records and submit reports to EPA as set forth in 40 CFR 171.311(f).

F. Proposed Arrangements for Enforcement of the EPA Plan

EPA will, as appropriate, exercise its FIFRA authorities to enforce this EPA Plan in applicable areas of Indian

country and in line with the EPA Policy for the Administration of Environmental Programs on Indian Reservations (Ref. 5), Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (Ref. 6), and Questions and Answers on the Tribal Enforcement Process (Ref. 7).

EPA will monitor compliance under this EPA Plan by conducting inspections, as appropriate, for misuse of RUPs, training and supervision of noncertified applicators, and required recordkeeping at applicators' places of business and at use sites and by investigating incidents, accidents, and complaints. EPA will also conduct inspections of RUP dealers and certified applicators in Indian country to ensure that RUP dealers are maintaining the required records in accordance with 40 CFR 171.311(f).

EPA's decisions to deny, modify, suspend, or revoke a certificate, or take other enforcement action under FIFRA, will be made in conformance with the FIFRA Enforcement Response Policy (Ref. 8). EPA's enforcement actions are conducted consistent with applicable EPA policies and guidance on enforcement-related and tribal-related matters.

VI. Specific Comments Are Sought on the Proposed EPA Plan

EPA is seeking comments on the entire proposed EPA Plan and is particularly interested in comments on the following issues:

1. Predator control categories. In the proposed EPA Plan, there are two scenarios where a federal certificate will be given for sodium cyanide or sodium fluoroacetate predator control categories: (1) If the relevant Indian tribe for the area of Indian country at issue has obtained its own registration for the products and conducts its own monitoring and supervision or (2) if a federal employee has obtained a state certification for these categories. EPA is seeking comments on whether EPA should continue to provide sodium cyanide and sodium fluoroacetate as categories for federal certification to apply in Indian country.

2. Identification verification. The proposed EPA Plan specifies that an identification "includes a photograph and date of birth, such as a driver's license, passport, military identification, Department of Motor Vehicle identification card, or other verifiable identification. Private applicators who do not have a verifiable photographic identification must attest their identity by providing a signed statement form a chairperson or equivalent elected leader of the relevant tribe affirming the

private applicator's age and identity." EPA is seeking comments on whether this is a reasonable means for tribes to ascertain identity verification, and whether there are any barriers for tribes where this identification verification would not work.

3. *Private applicator certification.* Under FIFRA section 11(a)(1), for Federal certification plans, EPA must offer a no-test option for private applicators. For more background, see Unit V.B. of this document. EPA proposes that private applicators who wish to obtain Federal certification under the no-test provision submit documentation of attendance and completion of an EPA-approved training. EPA is seeking comments on whether there are other methods or recommendations to assure private applicator competency in the absence of passing a certification exam.

VII. Tribal Governments' Option To Not Participate in the EPA Plan for Indian Country

In any area of Indian country not covered by an EPA-approved certification plan, the Agency will finalize and implement the proposed EPA Plan under 40 CFR 171.307(c)(1) for certifying private and commercial applicators to use or supervise the use of RUPs (see 40 CFR 171.307(c)). However, tribes may opt out of being covered by the proposed EPA Plan as described under 40 CFR 171.307(c)(2).

In order to opt out of coverage under the proposed EPA Plan, a tribe must notify EPA of the tribe's position by submitting a signed written statement from the chairperson or equivalent elected leader of the relevant tribe. The written statement must be addressed to the Director of the Field and External Affairs Division, Jackie Mosby, and submitted to EPA by one of the following methods:

- *Via the docket:* A tribe may submit notification via the docket of the tribe's position that the EPA Plan should not be implemented in their area of Indian country.
- *Via mail:* A tribe may submit notification via mail of the tribe's position to opt out of coverage under the proposed EPA Plan to: Jackie Mosby, Director, Field and External Affairs Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW (7506P), Washington, DC 20460.
- *Via email:* A tribe may submit via email of the tribe's position to the appropriate EPA staff listed in Appendix A of the "Tribal Certification Plan Outline" document and cc: Emily Ryan at ryan.emily@epa.gov.

The opt-out statement should be submitted prior to June 1, 2020. EPA plans to establish a process for opting out of the proposed EPA Plan after this date. EPA's website will have additional information on that process at <https://www.epa.gov/pesticide-applicator-certification-indian-country>.

Should the chairperson or equivalent elected leader of the relevant tribe opt out of the proposed EPA Plan, the Agency will not implement the finalized version of this EPA Plan within the tribe's Indian country, and there will be no lawful use of RUPs in the affected areas of Indian country (except where authorized by federal agency certified applicators). The application of RUPs will remain generally prohibited in these areas of Indian country unless and until a listed tribe obtains EPA approval of a tribal certification plan under 40 CFR 171.307(a) or (b), or a tribe submits to EPA a written statement from the chairperson or equivalent elected leader requesting implementation of this EPA Plan in their area of Indian country.

Tribes that intend to be covered by the proposed EPA plan do not have to submit a written statement to receive coverage. Additionally, in areas of Indian country where this EPA Plan applies, tribes may choose to further restrict or prohibit the use of RUPs in their areas of Indian country through the implementation of tribal codes, laws, regulations, or other applicable requirements. This EPA Plan does not supersede such tribal requirements. Applicators of RUPs in Indian country must comply with any applicable tribal restrictions or prohibitions on the use of RUPs.

VIII. Consultation With Tribal Governments

Consistent with its statutory authorities and the Federal government's trust responsibility to federally-recognized tribes, EPA has worked with the tribes on a government-to-government basis to appropriately develop a certification program that will help ensure the protection of human health and the environment in Indian country. EPA is planning to hold consultation with the tribes in February and April 2020 to ensure development of the final revised EPA Plan effectively meets their needs and those of RUP applicators in Indian country.

EPA has previously consulted with the tribes on the 2017 Rule. In April 2019, EPA conducted three early engagement sessions on the 2017 Rule to inform federally-recognized tribes on the 2017 revisions, discuss implementation of the 2017 Rule, and how this rule may affect tribes. These

sessions provided an overview of new federal standards for an EPA-approved certification plan to apply RUPs and options for certification of applicators in Indian country. The 2020 outreach and consultation will perform a similar function, posing specific questions to the tribes as EPA moves towards finalizing the EPA Plan by March 4, 2022 and the implementation schedule that will be included with the final revision of the EPA Plan. EPA engages with the tribes on a variety of pesticide-related initiatives by collaborating with the Tribal Pesticide Program Council (TPPC), a tribal technical resource and program and policy development dialogue group, focused on pesticides issues and concerns.

EPA will finalize the proposed EPA Plan in consultation with tribes consistent with, among other things, the following policies, orders, and guidance:

- "EPA Policy for the Administration of Environmental Programs on Indian Reservations," November 8, 1984;
- "Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy," January 17, 2001;
- Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," November 6, 2000, which was reaffirmed by Presidential memorandum, "Tribal Consultation," November 5, 2009; and
- "EPA Policy on Consultation and Coordination with Indian Tribes," May 4, 2011.

IX. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. DRAFT EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides within Indian Country. January 21, 2020.
2. EPA. Final EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides Within Indian Country; Notice of Implementation. Notice. **Federal Register** (79 FR 7185, February 6, 2014) (FRL-9904-18).
3. EPA. Certification of Pesticide Applicators; Final Rule. **Federal Register** (82 FR 952, January 4, 2017) (FRL-9956-70).
4. EPA. Tribal Certification Plan Outline: Resource to Support Development of Tribal Plans to Certify Applicators of

- Restricted use Pesticide in Indian Country. 2020.
5. EPA. EPA Policy for the Administration of Environmental programs on Indian Reservations. November 8, 1984.
6. EPA. Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy. January 17, 2001.

7. EPA. Questions and Answers on the Tribal Enforcement Process. April 17, 2007.
8. EPA. FIFRA Enforcement Response Policy. December 2009.

Authority: 7 U.S.C. 136–136y.

Dated: February 25, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

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