

Tribal Certification Plan Outline

Resource to Support Development of Tribal Plans to
Certify Applicators of Restricted Use Pesticides in
Indian Country

U.S. Environmental Protection Agency's Office of Pesticide Programs
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Tribal Certification Plan Outline

This document serves as a model outline for the order and contents of a tribal certification plan for those tribes that choose to develop their own certification plan under 40 CFR § 171.307(b). This approach is one of four options available to the tribes for establishing applicator certification programs under 40 CFR § 171.307. All four options are described in Appendix A, titled “Certification of Pesticide Applicators in Indian Country: Fact Sheet on Certification Options Available to Federally Recognized Tribes.” This outline is intended to assist tribal certifying authorities with the development of new or revised tribal certification plans for the certification of pesticide applicators. If a tribe with an existing tribal certification plan does not submit a proposed tribal-EPA agreement or a proposed tribal certification plan by March 4, 2020¹, then the existing certification plan will cease to be effective on March 4, 2020, and the tribe’s areas of Indian country will become subject to the 2014 EPA Plan. The tribe’s areas of Indian country will then become subject to the revised EPA Plan pending EPA’s implementation timeline, unless the tribe has chosen to opt out.

Section 1. CERTIFICATION PLAN ADMINISTRATION. [§171.303(b)(6)(i), (iii), and (iv)] *[Not required in Tribal laws or regulations]* The tribe’s plan must provide the following information about the administration of their certification plan and program(s) within the tribe’s jurisdiction:

(a) TRIBAL DESIGNATION (TRIBAL LEADER LETTER) AND POINT OF CONTACT. [§171.307(b), §171.303(b)(6)(i)] The tribe’s plan must include a written statement from the tribal chairperson or equivalent elected leader (“Tribal Leader”) designating the lead agency as responsible for administering the tribal plan. **This should be included with the plan as Attachment 1.** The plan must identify the lead agency that will have primary responsibility for submission and implementation of the tribe’s certification plan and for coordination with all other agencies or organizations that are involved in administering portions of the tribe’s certification plan in the area(s) covered by the plan. Provide the name, job title, email address, mailing address and phone number for the primary contact for the tribe for the certification plan. **[NOTE: Tribes may submit a copy of the previous Tribal Leader’s letter that was submitted with their current EPA-approved plan if the original designation has not changed.]**

Tribe Name	
Lead Agency	
Primary Contact Name and Title <i>(i.e., the person responsible for plan administration, maintenance, and reporting to EPA)</i>	
Primary Contact Email	
Primary Contact Phone Number	

¹ See 40 CFR §§ 171.307(a) and 171.307(b).

Primary Contact Mailing Address	
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(b) OTHER AGENCIES AND CONTACTS. [§171.307(b), §171.303(b)(6)(i)] The tribe’s plan must identify all other cooperating agencies responsible for applicator certification and the functions performed by each, including compliance monitoring and enforcement responsibilities. A “cooperating agency” is defined as an agency that actively performs duties related to pesticide applicator certification and/or training. Cooperating agencies may include tribal agencies other than the lead agency, as well as non-tribal authorities such as EPA Regional offices who may be involved in criminal enforcement activities. For each cooperating agency, the tribe must: 1) provide the names of the cooperating agency involved in certification-related activities; 2) the role of the cooperating agency (e.g., Public Health pest control certification, applicator training, compliance and enforcement for public health pest control, etc.); 3) the primary contact for the cooperating agency including the name, job title, email address, mailing address and phone number for the primary contact; and 4) a thorough explanation of how the lead agency will coordinate with the other cooperating agencies to ensure consistency and that the plan is carried out so certification programs meet the required standards.

Cooperating Agency Name:	
Cooperating Agency Role:	
Primary Contact Name:	
Primary Contact Title:	
Primary Contact Email Address:	
Primary Contact Phone Number:	
Primary Contact Mailing Address:	
Explanation of Agency Coordination Process:	

(c) QUALIFIED PERSONNEL. [§171.307(b), §171.303(b)(6)(iii)] The tribe’s plan must provide a list of qualified personnel (positions or job titles, NOT names of staff), including number of staff, job titles, and job functions of the lead agency’s staff involved in the applicator certification program, and the staff of all cooperating agencies or organizations involved in the applicator certification program.

Lead agency personnel: [Add rows if needed]

<u>POSITION TITLE</u>	FUNCTION	NUMBER OF FTE
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Cooperating agency personnel: [Add rows if needed]

<u>POSITION TITLE</u>	FUNCTION	NUMBER OF FTE

(d) DETAILED MAP OR LEGAL DESCRIPTION OF AREA(S) COVERED BY THE TRIBE’S PLAN [§171.307(b)(1)(i)] The tribe’s plan must include either a detailed map or a legal description of the area(s) of Indian country where the tribe’s certification plan will apply.

(e) SUFFICIENT RESOURCES. [§171.307(b), §171.303(b)(6)(iv)] The tribe’s plan must include a statement affirming the commitment of the lead agency and cooperating agencies/organizations to ensure they will have sufficient resources to carry out the program as outlined in their plan.

Tribe’s Affirmation Statement: [INSERT HERE]

Section 2. LEGAL AUTHORITIES. [§171. 307(b), §171.303(b)(6)(ii), and §171.303(b)(7)(i)-(vii)] A tribe that chooses to develop its own certification plan must demonstrate that the plan meets all the requirement of § 171.303 that are applicable to state plans, except that the tribe’s plan will not be required to meet the requirements of § 171.303(b)(6)(iii) with respect to provisions for criminal penalties, or any other requirement for assessing criminal penalties. As described in both § 171.307(b) and the relevant paragraphs in § 171.303, the tribe’s plan must include the following:

(a) WRITTEN OPINION. [§171.303(b)(6)(ii)] The tribe’s plan must include a written opinion from the tribe’s general counsel or from the legal counsel of the lead agency that states that the lead agency and other cooperating agencies have the legal authority necessary to carry out the tribe’s certification plan. **This should be included with the plan as Attachment 2-A.**

(b) LAWS AND REGULATIONS. [§171.303(b)(7)] The tribe's plan must include a complete copy of all tribal laws and regulations relevant to the certification plan. **These should be included with the plan as Attachment 2-B.**

(c) PROVISIONS FOR GROUNDS FOR DENYING, SUSPENDING, OR REVOKING A CERTIFICATION. [§171.303(b)(7)(i)] The tribe's plan must include the citation to the specific tribal laws and regulations that demonstrate specific legal authority for provisions for and listing of the acts which would constitute grounds for denying, suspending, or revoking a certification. At a minimum, include misuse of a pesticide, falsifications of records required to be maintained by the certified applicator, a criminal conviction under section 14(b) of FIFRA, a final order imposing civil penalty under section 14(a) of FIFRA, and conclusion of a tribal enforcement action for violations of tribal laws or regulations relevant to the tribe's certification plan. **The citation and copy of the specific provision should be included with the plan as Attachment 2-C.**

(d) PROVISIONS FOR REVIEWING, SUSPENDING, AND REVOKING A CERTIFICATION. [§171.303(b)(7)(ii)] The tribe's plan must include the citation to the specific tribal laws and regulations that demonstrate specific legal authority for provisions for reviewing and where appropriate, suspending, or revoking an applicator's certification based on the grounds listed in the plan (for denying, suspending, and revoking certification of applicators) or a criminal conviction under section 14(b) of FIFRA, a final order imposing civil penalty under section 14(a) of FIFRA, or conclusion of a tribal enforcement action for violations of tribal laws or regulations relevant to the tribe's certification plan. **The citation and copy of the specific provision should be included with the plan as Attachment 2-D.**

(e) PROVISIONS FOR ASSESSING PENALTIES. [§171.307(b)(1)(ii), §171.303(b)(7)(iii)] The tribe's plan must include the citation to the specific tribal laws and regulations that demonstrate specific legal authority for provisions for assessing civil penalties for violations of the laws and regulations relevant to the certification plan. **The citation and copy of the specific provision should be included with the plan as Attachment 2-E.**

The tribe's plan is not required to meet the requirements of §171.303(b)(7)(iii) with respect to provisions for criminal penalties but must include a memorandum of agreement as described in paragraph (f) below.

(f) MEMORANDUM OF AGREEMENT BETWEEN THE TRIBE AND EPA CONCERNING CRIMINAL ENFORCEMENT AUTHORITY [§171.307(b)(2) and §171.307(b)(3)]

To the extent that the tribe is precluded from exercising criminal enforcement authority, the Federal government will exercise primary criminal enforcement authority in regard to a certification plan under §171.307(b). The tribe and the relevant EPA Region(s) shall develop a procedure whereby the tribe will provide potential investigative leads to EPA and/or other appropriate Federal

agencies in an appropriate and timely manner. This procedure shall encompass, at a minimum, all circumstances in which the tribe is precluded from exercising relevant criminal enforcement authority and shall be described in a memorandum of agreement signed by the tribe and the relevant EPA Regional Administrator(s).

A plan for the certification of applicators under §171.307(b) shall not be effective until the memorandum of agreement required under §171.307(b)(2) has been signed by the tribe and the relevant EPA Region(s) and the plan has been approved by EPA.

A draft of the memorandum of agreement including all the circumstances in which the tribe is precluded from exercising relevant criminal enforcement authority should be included with the plan as Attachment 2-F.

(g) PROVISIONS FOR RIGHT OF ENTRY FOR INSPECTIONS. [§171.303(b)(7)(iv)]

The tribe's plan must include the citation to the specific tribal laws and regulations that demonstrate specific legal authority for provisions for right of entry by consent or warrant by tribal and federal officials at reasonable times for sampling, inspection, and observation purposes. **The citation and copy of the specific provision should be included with the plan as Attachment 2-G.**

(h) PROVISIONS FOR MAKING IT UNLAWFUL TO APPLY RUPs UNLESS CERTIFIED. [§171.303(b)(7)(v)]

The tribe's plan must include the citation to the specific tribal laws and regulations that demonstrate specific legal authority for provisions for making it unlawful for persons to use RUPs other than certified or noncertified applicators working under the supervision of a certified applicator. **The citation and copy of the specific provision should be included with the plan as Attachment 2-H.**

(i) PROVISIONS FOR COMMERCIAL APPLICATOR RECORDKEEPING.

[§171.303(b)(7)(vi)] The tribe's plan must include the citation to the specific tribal laws and regulations that demonstrate specific legal authority for provisions for requiring commercial applicators to record and keep routine operational records for at least two years and that such records will be available to appropriate Tribal officials. At a minimum, records must contain for each restricted use pesticide application:

- Name and address of person for whom it was applied.
- Application – location, size of area treated; crop, commodity, stored product or site; time and date of application.
- RUP - brand or product name, EPA registration number, total amount applied per location per application;
- Certified applicator – name and certification number, if a supervised application the name of the noncertified applicator.
- Requirement of commercial applicators to create or verify existence of records of noncertified applicator qualifications.

The citation and copy of the specific provision should be included with the plan as Attachment 2-I.

(j) PROVISIONS FOR RUP DEALER RECORDKEEPING. [§171.303(b)(7)(vii)] The tribe's plan must include the citation to the specific tribal laws and regulations that demonstrate specific legal authority for provisions requiring RUP retail dealers to record and maintain at each individual dealership for at least two years, records of each transaction where an RUP is distributed or sold to any person, excluding transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities. Records must include:

- For each RUP distributed or sold, the name and address of residence or principal place of business of each certified applicator, or if applicable of the noncertified applicator for application by a certified applicator.
- From the certification document presented to the seller on the valid certification issued by the state, tribe, or federal agency authorizing the certified applicator to purchase the RUP – the certification number, expiration date and certification categories of the certified applicator that are relevant to the pesticide sold.
- The product name and EPA registration number of the RUP distributed or sold in the transaction, including any applicable emergency exemption of State special local need registration number.
- The quantity of the RUP distributed or sold in the transaction.

The citation and copy of the specific provision should be included with the plan as Attachment 2-J.

Section 3. COMMERCIAL APPLICATOR CERTIFICATION CATEGORIES.

[§171.307(b), §171.101, §171.103, §171.303(a)(2), §171.303(a)(3), §171.303(b)(2) and §171.303(b)(2)(ii)(A)] *[Must be in tribal laws or regulations for both options 1 and 2.]* Tribes must provide a list of their commercial applicator certification category and subcategory names and descriptions. Tribes must provide the required documentation as outlined below adopting either option one or option two.

OPTION 1: TRIBE ADOPTS EPA'S FEDERAL CATEGORIES AND STANDARDS. If the tribe is adopting the Federal commercial applicator categories and standards outright with no changes, the tribe must include a statement that the tribe has adopted the EPA standards for commercial applicator certification at § 171.101 and 171.103 as is and provide the appropriate citations for the tribal laws and/or regulations demonstrating such action. **The citation and copy of the specific provisions that accomplish the adoption of the Federal categories and standards should be included with the plan as Attachment 3.**

Tribe's Affirmation Statement: [INSERT HERE]

Federal Commercial Applicator Categories Adopted by the Tribe: [Add rows if needed]

[NOTE: If the tribe is adopting all Federal categories, it may include a statement that is the case rather than list all Federal categories. If the tribe has adopted only a subset of the Federal categories, then the tribe must list the Federal categories adopted below:

FEDERAL CATEGORIES ADOPTED	ADOPTED FEDERAL STANDARDS (Y/N)	TRIBAL LAW/REG CITATION

OR

OPTION 2: TRIBE ADOPTS ITS OWN COMMERCIAL APPLICATOR CATEGORIES AND STANDARDS. If the tribe is adopting its own categories and standards, then the tribe must provide a statement that the tribe has adopted its own standards (that meet or exceed federal standards at § 171.101 and 171.103) and provide all of the following:

- A list and detailed description of all categories and subcategories and the citations for the tribal laws and/or regulations. Tribes must provide the list of tribal categories/subcategories in the table below, along with the category/subcategory description and an indication of the closest comparable EPA Federal category.
- A list and detailed description of the category standards for certification adopted by the tribe and the citations for the tribal laws and/or regulations.

The citation and copy of the specific provisions that document adoption of the tribal categories and standards should be included with the plan as Attachment 3.

Tribe’s Affirmation Statement: [INSERT HERE]

Tribal Commercial Applicator Categories/Subcategories: [Add rows if needed]

TRIBAL CATEGORY/SUBCATEGORY NAME	TRIBAL CATEGORY/SUBCATEGORY DESCRIPTION	CLOSEST COMPARABLE EPA FEDERAL CATEGORY

Section 4. PRIVATE APPLICATOR CERTIFICATION CATEGORIES.

[§171.307(b), §171.105, §171.303(a)(2), §171.303(a)(3), §171.303(b)(3) and §171.303(b)(3)(i), and §171.303(b)(3)(ii)] *[Must be in tribal laws or regulations for both options 1 and 2.]* Tribes must provide a list of their private applicator certification category and subcategory names and descriptions. Tribes must provide the required documentation as outlined below adopting either option one or option two.

OPTION 1: TRIBE ADOPTS EPA’S FEDERAL CATEGORIES AND STANDARDS. If the tribe is adopting the Federal private applicator categories and standards outright with no changes, the tribe must include a statement that the tribe has adopted the EPA standards for private applicator certification at § 171.105 as is and provide the appropriate citations for the tribal laws and/or regulations demonstrating such action. **The citation and copy of the specific provisions that accomplish the adoption of the Federal categories and standards should be included with the plan as Attachment 4.**

Tribe’s Affirmation Statement: [INSERT HERE]

Federal Private Applicator Categories Adopted by the Tribe: [Add rows if needed]
[NOTE: If the tribe is adopting all Federal categories, it may include a statement that is the case rather than list all Federal categories. If the tribe has adopted only a subset of the Federal categories, then the tribe must list the Federal categories adopted below:

FEDERAL CATEGORIES ADOPTED	ADOPTED FEDERAL STANDARDS (Y/N)	TRIBAL LAW/REG CITATION

OR

OPTION 2: TRIBE ADOPTS ITS OWN PRIVATE APPLICATOR CATEGORIES AND STANDARDS. If the tribe is adopting its own categories and standards for private applicators, then the tribe must provide a statement that the tribe has adopted

its own standards (that meet or exceed federal standards at § 171.105) and provide all the following:

- A list and detailed description of all private applicator categories and subcategories and the citations for the tribal laws and/or regulations. Tribes must provide the list of tribal categories/subcategories in the table below, along with the category/subcategory description and an indication of the closest comparable EPA Federal category.
- A list and detailed description of the category standards for certification adopted by the tribe and the citations for the tribal laws and/or regulations.

The citation and copy of the specific provisions that document adoption of the tribal categories and standards should be included with the plan as Attachment 4.

Tribe’s Affirmation Statement: [INSERT HERE]

Tribal Private Applicator Categories/Subcategories: [Add rows if needed]

TRIBAL CATEGORY/SUBCATEGORY NAME	TRIBAL CATEGORY/SUBCATEGORY DESCRIPTION	CLOSEST COMPARABLE EPA FEDERAL CATEGORY

Section 5. LIMITED USE CERTIFICATION CATEGORIES [IF APPLICABLE].

[§171.307(b), §171.303(a)(4), §171.303(b)(2) and §171.303(b)(2)(ii)(A)] *[Must be in tribal laws or regulations.]* Tribes must provide a list of all limited use categories the tribe has adopted for commercial applicators and the standards of competency for any such categories. For each limited use category, the tribe must provide all of the following:

- (a) The limited use category name and category description. **Tribes must provide the list of tribal limited use categories in the table below, along with the category description.**
- (b) An explanation of why it is not practical to include the commercial applicator limited use category within any of the federal commercial applicator categories in §171.101 and their associated category-specific standards of competency in §171.103(d) or within any comparable tribal categories and standards.
- (c) **The citation and copy of the specific provisions that document adoption of the tribal limited use categories and any associated category certification**

standards for the limited use categories should be included with the plan as Attachment 5.

TRIBAL LIMITED USE CATEGORY NAME	TRIBAL LIMITED USE CATEGORY DESCRIPTION	EXPLANTION/RATIONALE FOR LIMITED USE CATEGORY

Section 6. STANDARDS FOR CERTIFICATION OF COMMERCIAL

APPLICATORS. [§171.307(b), §171.101, §171.103, §171.303(a)(1), §171.303(a)(3), §171.303(b)(2) and §171.303(b)(2)(ii)(A)-(C)] *[See each part of this section below on what must be in tribal laws or regulations.]* Tribes must provide documentation of their commercial applicator certification standards meeting or exceeding the Federal commercial applicator certification standards prescribed by EPA under §§171.101 and 171.103. Tribes must provide the required documentation as outlined below adopting either option one or option two.

OPTION 1: TRIBE ADOPTS EPA’S FEDERAL STANDARDS FOR CERTIFICATION OF COMMERCIAL APPLICATORS. *[Must be in tribal laws or regulations.]* If the tribe is adopting all the Federal commercial applicator certification standards outright with no changes, the tribe must include a statement that the tribe has adopted the EPA standards for commercial applicator certification at § §171.101 and 171.103 as is and provide the appropriate citations for the tribal laws and/or regulations demonstrating such action. **The citation and copy of the specific provisions that accomplish the adoption of the Federal categories and standards should be included with the plan as Attachment 6.**

Tribe’s Affirmation Statement: [INSERT HERE]

OR

OPTION 2: TRIBE ADOPTS ITS OWN STANDARDS FOR CERTIFICATION OF COMMERCIAL APPLICATORS. *[See each section a, b, c, d and e – whether the requirement must be in tribal laws or regulations.]* If the tribe is adopting its own standards for commercial applicator certification, then the tribe must provide a statement that the tribe has adopted its own standards that meet or exceed federal standards at § §171.101 and 171.103 and provide all of the following:

(a) MINIMUM AGE REQUIREMENT. [§171.103(a)(1)] *[Must be in tribal laws or regulations.]* Documentation that the tribe has adopted a minimum age

requirement for commercial applicator certification of at least 18 years old. **The documentation must include the citation and copy of the specific provisions for adoption of the tribal minimum age requirements and should be included with the plan as Attachment 6-A.**

(b) CORE STANDARDS OF COMPETENCY. [§171.103(c)] *[Must be in tribal laws or regulations.]* Documentation that the tribe has adopted core standards of competency that meet or exceed federal standards at § 171.101 and 171.103. **The documentation must include the citation and copy of the specific provisions that document that the tribe has adopted core standards of competency that meet or exceed federal standards and should be included with the plan as Attachment 6-B.**

(c) EXAMINATION STANDARDS. [§171.103(a)(2)] *[Not required to be in tribal laws or regulations.]* A detailed description of the tribe's certification examination standards for commercial applicators and an explanation and documentation of how they meet/exceed federal exam administration standards at §171.103(a)(2) (and listed in Appendix B), including a description of any alternative identification that a tribe will authorize for qualification for certification in addition to a valid, government-issued photo identification. **The documentation should explain the specific provisions that document that the tribe has adopted examination standards that meet or exceed federal standards and should be included with the plan as Attachment 6-C.**

(d) STANDARDS FOR LIMITED USE CATEGORY CERTIFICATION, IF APPLICABLE. [§171.103(a)(4), §171.103(a)(4)(iii) and §171.103(a)(4)(v)] *[Must be in tribal laws or regulations if the tribe has one or more.]* Tribes must provide all the following documentation if they have established any limited use category certifications:

- Documentation that the tribe has adopted core standards of competency that meet or exceed federal standards at § 171.101 and 171.103 and a requirement that candidates for certification in a limited use category pass the written examination covering the core standards at § 171.103(c) and demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticide(s) covered by the limited use category. Tribes must provide a detailed description of the core standards of competency if they are different than those used for all other commercial applicator categories.
- A detailed description of the process by which applicators must demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of the restricted use pesticides authorized under the limited use category based on the competency standards identified in Section 5 of the plan. [NOTE: This does not have to be accomplished by a written examination.] **The documentation must include the citation and copy of the specific provisions that document that the tribe has adopted standards for limited use category certification that meet or exceed federal standards and should be included with the plan as Attachment 6-D.**

(e) EXCEPTIONS, IF APPLICABLE. [§171.103(e)] *[Must be in tribal laws or regulations if the tribe has either of these exceptions. Tribes can exceed federal regulations –the tribe is not required to have either of these exceptions.]* Tribes must provide a detailed description and documentation of any exceptions to the tribal certification requirements for commercial applicators (e.g., persons conducting laboratory research involving restricted use pesticides and/or Doctors of Medicine and Doctors of Veterinary Medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions). **The documentation must include the citation and copy of the specific provisions that document that the tribe has adopted the exceptions to certification for commercial applicators and should be included with the plan as Attachment 6-E.**

Tribe's Affirmation Statement: [INSERT HERE]

Section 7. STANDARDS FOR CERTIFICATION OF PRIVATE APPLICATORS.

[§171.307(b), §171.105, §171.303(a)(1), §171.303(a)(3), §171.303(b)(3) and §171.303(b)(3)(ii-iv)] *[See options below on what must be in tribal laws or regulations.]* Tribes must provide documentation of their private applicator certification standards meeting or exceeding the Federal private applicator certification standards prescribed by EPA under §171.105. Tribes must provide the required documentation as outlined below adopting either option one or option two.

OPTION 1: TRIBE ADOPTS EPA'S FEDERAL STANDARDS FOR CERTIFICATION OF PRIVATE APPLICATORS. *[Must be in tribal laws or regulations.]* If the tribe is adopting all the Federal private applicator certification standards outright with no changes, the tribe must include a statement that the tribe has adopted the EPA standards for private applicator certification at §171.105 as is, and the tribe must also provide the appropriate citations for the tribal laws and/or regulations demonstrating such action. **The citation and copy of the specific provisions that accomplish the adoption of the Federal categories and standards should be included with the plan as Attachment 7.**

Tribe's Affirmation Statement: [INSERT HERE]

OR

OPTION 2: TRIBE ADOPTS ITS OWN STANDARDS FOR CERTIFICATION OF PRIVATE APPLICATORS. *[See each parts a through d on whether it must be in tribal laws or regulations.]* If the tribe is adopting its own standards for private applicator certification, then the tribe must provide a statement that the tribe has adopted its own standards that meet or exceed federal standards at §171.105 and provide all the following:

(a) MINIMUM AGE REQUIREMENT. [§171.105(g)] *[Must be in tribal laws or regulations.]* Documentation that the tribe has adopted a minimum age requirement for private applicator certification of at least 18 years old. **The documentation must**

include the citation and copy of the specific provisions that document adoption of the tribal minimum age requirements and should be included with the plan as Attachment 7-A.

(b) CORE STANDARDS OF COMPETENCY. [§171.105(a)] *[Must be in tribal laws or regulations.]* Documentation that the tribe has adopted general core standards of competency that meet or exceed federal standards at §171.105(a). **The documentation must include the citation and copy of the specific provisions that document that the tribe has adopted general core standards of competency for private applicators that meet or exceed federal standards and should be included with the plan as Attachment 7-B.**

(c) DETERMINATION OF COMPETENCY AND EXAMINATION STANDARDS. [§171.105(h)] *[Not required to be in tribal laws or regulations.]* If private applicator certification is based on examination, tribes must provide a detailed description of the tribe's certification examination standards for private applicators and an explanation and documentation of how they meet/exceed federal exam administration standards at §171.103(a)(2) and listed in Appendix B, including a description of any alternative identification that a tribe will authorize for qualification for certification in addition to a valid, government-issued photo identification. If private applicator certification is based upon (non-exam) training, tribes must provide a detailed explanation of how the quantity, content, and quality of the tribe's training program ensure that a private applicator demonstrates the level of competency required § 171.105 for private applicators. This explanation must include at the minimum, all of the following factors:

- The quantity of training required to become certified as a private applicator.
- The content that is covered by the training and how the tribe ensures that required content is covered.
- The process the tribe uses to approve training programs for private applicator certification.
- How the tribe ensures the ongoing quality of the training program for private applicator certification.

The documentation must include the citation and copy of the specific provisions that document that the tribe has adopted examination standards or alternative determinations of competency that meet or exceed federal standards and should be included with the plan as Attachment 7-C.

(d) EXCEPTIONS, IF APPLICABLE. [§171.105(i)] *[Must be in tribal laws or regulations if either of these exceptions exists. Tribes may choose not to have either of these exceptions.]* Tribes must provide a detailed description and documentation of any exceptions to the tribal private applicator certification requirements in (e.g., persons conducting laboratory research involving restricted use pesticides and/or Doctors of Medicine and Doctors of Veterinary Medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions). **The documentation must include the citation and copy of the specific provisions that document that the tribe has adopted the exceptions to certification and should be included with the plan as Attachment 7-D.**

Tribe's Affirmation Statement: [INSERT HERE]

Section 8. RECERTIFICATION STANDARDS. [§171.307(b), §171.107, §171.303(a)(6), and §171.107.303(b)(4)] *[Must be in tribal laws or regulations.]*

Tribes must provide documentation that the tribal standards for the recertification of applicators of restricted use pesticides meet or exceed those standards prescribed by the Agency under § 171.107 (and listed in Appendix C). Such documentation must include a statement that the tribe has adopted its own standards that meet or exceed the standards for recertification prescribed by the Agency under § 171.107 and a detailed description of all of the Tribal standards for recertification of private and commercial applicators, including all the following:

- The certification period, which may not exceed five years.
- If recertification is based upon written examination, a description of the tribe's process for reviewing, and updating as necessary, the written examination(s) to ensure that the written examination(s) evaluates whether a certified applicator demonstrates the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators.
- If recertification is based upon continuing education, an explanation of how the quantity, content, and quality of the tribe's continuing education program ensures that a certified applicator continues to demonstrate the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators, including but not limited to:
 - (A) The quantity of continuing education required to maintain certification.
 - (B) The content that is covered by the continuing education program and how the tribe ensures the required content is covered.
 - (C) The process the tribe uses to approve continuing education courses or events, including information about how the tribe ensures that any continuing education courses or events verify the applicator's successful completion of the course or event.
 - (D) How the tribe ensures the ongoing quality of the continuing education program.
- If the tribe has adopted use of limited use category certifications, then the tribe must provide a detailed description of the recertification standards for the limited use category and how those standards meet or exceed the standards prescribed by the Agency under § 171.107.

The documentation must include the citation and copy of the specific provisions that document the tribe has adopted standards for recertification that meet or exceed the Federal standards for recertification at §171.107 and should be included with the plan as Attachment 8.

Tribe's Affirmation Statement: [INSERT HERE]

Section 9. STANDARDS FOR THE DIRECT SUPERVISION OF NONCERTIFIED APPLICATORS. [§171.307(b), §171.201, §171.303(a)(7) and §171.303(b)(5)]

[Must be in tribal laws or regulations for both options 1, 2 and 3.] Tribes must provide documentation that their tribal standards for the direct supervision of noncertified applicators by certified private and commercial applicators of restricted use pesticides meet or exceed those standards prescribed by the Agency under § 171.201 (and listed in Appendix D). Documentation required is outlined for each of the following three options available to tribes.

OPTION 1: TRIBE PROHIBITS APPLICATION BY NONCERTIFIED APPLICATORS. If the tribe has adopted provisions prohibiting noncertified applicators from using restricted use pesticides under the direct supervision of certified private and/or commercial applicators, then the tribe must provide a statement that the tribe prohibits noncertified applicators from using restricted use pesticides under the direct supervision of certified private and/or commercial applicators, and a citation of the specific tribal laws and/or regulations demonstrating that the tribe has adopted such a prohibition. The citation and copy of the specific provisions demonstrating that the tribe has adopted such a prohibition should be included with the plan as Attachment 9.

Tribe's Affirmation Statement: [INSERT HERE]

OR

OPTION 2: TRIBE ADOPTS EPA'S FEDERAL STANDARDS FOR DIRECT SUPERVISION. If the tribe has adopted the Federal standards for direct supervision of noncertified applicators by certified private and/or commercial applicators prescribed by the Agency under § 171.201, then the tribe must provide a statement that the tribe has adopted the standards for direct supervision of noncertified applicators by certified private and/or commercial applicators prescribed by the Agency under § 171.201 and a citation of the specific tribal laws and/or regulations demonstrating that the tribe has adopted such standards. The citation and copy of the specific provisions demonstrating that the tribe has adopted Federal standards for direct supervisions should be included with the plan as Attachment 9.

Tribe's Affirmation Statement: [INSERT HERE]

OR

OPTION 3: TRIBE ADOPTS ITS OWN STANDARDS FOR DIRECT SUPERVISION. If the tribe has adopted its own standards for direct supervision of noncertified applicators by certified private and/or commercial applicators, then the tribe must provide a statement that the tribe has adopted its own standards that meet or exceed federal standards at §171.201 (and listed in Attachment C), and a detailed explanation of how the tribe standards for direct supervision meet or exceed the standards prescribed by the Agency under § 171.201, including all the following:

- Requirements for the certified applicator and supervisor responsibilities
- Requirements of the noncertified applicator under supervision, including documenting requirements for a minimum age requirement of 18 for noncertified applicators (or 16 years old if the supervisor is a certified private applicator who is an immediate family member and the restricted use pesticide is not a fumigant, sodium cyanide, sodium fluoroacetate, or applied aerially)
- Noncertified applicator qualifications
- Noncertified applicator training program(s)
- Recordkeeping requirements for noncertified applicator training
- Exceptions, if any (e.g., Doctors of Medicine and Doctors of Veterinary Medicine)

The documentation must include the citation and copy of the specific provisions that document that the tribe has adopted all the standards for direct supervision of noncertified applicators by certified private and/or commercial applicators that meet or exceed the Federal standards for direct supervision at §171.201, and this should be included with the plan as Attachment 9.

Section 10. CREDENTIALS. [§171.307(b), § 171.303(a)(8), and

§171.303(a)(4)(vii)] *[Not required to be in tribal laws or regulations.]* Tribes must provide a description below of the credentials or documents the tribe's certifying authority will issue to each certified applicator verifying certification. If applicable, tribes must also describe below the limited use certification credential. The limited use credential must clearly state that the applicator is only authorized to purchase and use the specific restricted use pesticide(s) identified in that credential. **The tribe should include example copies of the tribe's certification credentials with the plan as Attachment 10.**

Section 11. RELIANCE ON CERTIFICATIONS ISSUED BY OTHER CERTIFYING AUTHORITIES. [§171.307(b), §171.303(a)(9)]

[Not required to be in tribal laws or regulations.] A tribe may waive any or all the procedures specified in §171.103, §171.105, and §171.107 when certifying applicators in reliance on valid current certifications issued by another state, tribal, or federal agency under an EPA-approved certification plan. The tribe must provide an explanation below of whether, and if so, under what circumstances, the tribe will certify applicators based in whole or in part on their holding a valid current certification issued by another state, tribe, or federal agency.

Tribes must also provide documentation below with their explanation to demonstrate that certifications issued in reliance on certifications issued by other certifying authorities are subject to all the following conditions:

- A tribe may rely only on valid current certifications that are issued under an approved state, tribe, or federal agency certification plan.
- The tribe has examined the standards of competency used by the state, tribe, or federal agency that originally certified the applicator and has determined that, for each category of certification that will be accepted, they are comparable to its own standards.
- Any tribe that chooses to certify applicators based, in whole or in part, on the applicator having been certified by another state, tribe, or federal agency, must include in its plan a mechanism that allows the tribe to terminate an applicator's certification upon notification that the applicator's original certification terminates because the certificate holder has been convicted under section 14(b) of FIFRA or has been subject to a final order imposing a civil penalty under section 14(a) of FIFRA.
- The tribe issuing a certification based in whole or in part on the applicator holding a valid current certification issued by another state, tribe, or federal agency must issue an appropriate tribal credential or document to the applicator.

If additional room is needed to provide the explanation or documentation it should be included with the plan as Attachment 11.

Section 12. REPORTS TO EPA. [§171.307(b), §171.303(c)] *[Not required to be in tribal laws or regulations.]* The tribe must provide a statement that the tribe agrees to submit the following reports to the EPA in a manner and containing the information that the EPA requires:

(1) An annual report to be submitted by the tribe's lead agency to the EPA by the date established by the EPA that includes all the following information:

- The number of new general private applicator certifications and recertifications issued during the last 12-month reporting period, and total number of applicators holding a valid general private applicator certification at the end of the last 12-month reporting period.
- For each private applicator category specified in the certification plan, the numbers of new certifications and recertifications issued during the last 12-month reporting period, and the total number holding valid certifications in each category at the end of the last 12-month reporting period.
- The numbers of new commercial applicator certifications and recertifications issued during the last 12-month reporting period, and the total number of applicators certified in at least one commercial applicator certification category at the end of the last 12-month reporting period.
- For each commercial applicator certification category or subcategory specified in the certification plan, the numbers of new certifications and recertifications issued during the last 12-month reporting period, and the total number of

commercial applicators holding a valid certification in each category or subcategory at the end of the last 12-month reporting period.

- A description of any modifications made to the approved certification plan during the last 12-month reporting period that have not been previously evaluated by the Agency under § 171.309(a)(3).
- A description of any proposed changes to the certification plan that the tribe anticipates making during the next reporting period that may affect the certification program.
- A summary of enforcement activities related to the use of restricted use pesticides during the last 12-month reporting period.

(2) Any other reports reasonably required by the Agency in its oversight of restricted use pesticides.

Tribe's Affirmation Statement: [INSERT HERE]

Section 13. IMPLEMENTATION TIMEFRAME. [§171.307(b), §171.303(b)(6)(v)]

The tribe must provide below a schedule/document outlining the tribe's proposed approach and anticipated timeframe for implementing the tribe's certification plan after EPA approves the tribe's certification plan. The document should clearly indicate the tribe's schedule for completing any legislative and regulatory changes necessary to implement the plan and the timeframes for completing implementation of all the tribe's plan components and requirements (e.g., adoption of new procedures and standards, completion of revisions to the exams and training materials, etc.) such that the tribe is in full compliance with the Part 171 revisions.

Tribe's Implementation Schedule: [INSERT HERE or provide as Attachment 13]

APPENDIX A

Certification of Pesticide Applicators in Indian Country: Fact Sheet on Certification Options Available to Federally Recognized Tribes

Introduction

In January 2017, EPA finalized the Certification of Pesticide Applicators (Certification Rule) regulation which establishes standards and requirements for state, tribal, and federal agency certification programs for pesticide applicators when applying restricted use pesticides (RUPs). EPA classifies the most acutely toxic pesticides or those needing to be applied with special care as RUPs, and these pesticide products may only be sold to a certified applicator or to another person for use by a certified applicator and may only be used by a certified applicator or certain persons working under his or her direct supervision.

The purpose of this document is to inform federally recognized tribes of new requirements for certified applicators and EPA's intent to propose revisions to the *EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides within Indian Country* (i.e., EPA Plan) and associated options.

The 2017 Certification Rule includes the following new requirements:

- strengthened competency standards for private applicators;
- new certification categories for certified applicators;
- a maximum certification period of five years for private and commercial applicators;
- minimum competency requirements for noncertified applicators applying RUPs under the supervision of a certified applicator;
- obligation for those supervising noncertified applicators to provide specific application instructions and a means to immediately communicate with those under their supervision;
- age minimum for all persons using RUPs (at least 18 years old) with an exception for noncertified applicators on a farm under the direct supervision of a private applicator who is an immediate family member to be at least 16 years of age;
- obligation for candidates for certification to present identification;
- certification exams to be proctored and only materials approved by certifying authority allowed to be used during exams; and
- record keeping for all dealers of RUPs of sales and applicator's certification.

Three certification options are available to tribes in order to establish valid EPA-recognized/approvable certification programs in Indian country under the 2017 Certification Rule, along with a fourth "opt-out" option. Options 1-3 provide different mechanisms by which individuals can become certified to use RUPs in specified areas of Indian country; establish requirements that ensure applicator competency in the proper use and application of RUPs

within those areas of Indian country; and provide for the enforcement of laws and regulations concerning distribution, sale and use of RUPs within those areas of Indian country. Option 4 provides a mechanism for tribes to opt out of the EPA Plan, generally precluding use of RUPs in their areas of Indian country.

Options at a glance:

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 states, federal agencies, 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 plan will be negotiated with the appropriate 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). Such a plan would be similar to state certification plans.
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 appropriate EPA region will implement the EPA Plan as provided in 40 CFR § 171.307(c), except where a tribe has elected to opt out per option 4. 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.
4. **Opt-out of the EPA Plan:** The Agency will not implement the EPA Plan for any area of Indian country where the chairperson or equivalent elected leader of the relevant tribe provides the Agency a written statement of the tribe's position that the EPA Plan should not be implemented per 40 CFR § 171.307(c)(2).

Certification Options Available to Federally Recognized Tribes

All applicators of RUPs in Indian country must hold a certification valid in that area of Indian country or be working under the direct supervision of a certified applicator whose certification is valid in that area of Indian country. A tribe may certify applicators of RUPs in Indian country only pursuant to a certification plan approved by the Agency. See option 2 for further details.

Each option available to federally recognized tribes is detailed below:

1. Tribal Reliance on Certifications Issued by Specified Jurisdictions (Tribal-EPA Agreement):

A tribal certification plan that relies exclusively on certifications issued by other jurisdictions would be created through a written agreement with the relevant EPA region(s) and would contain all of the following information:

- 1) detailed map or legal description of areas of Indian country covered by the plan;
- 2) list of states, tribes or federal agencies upon whose certifications the tribe will rely;
- 3) description of tribal law, regulation, or code relating to the application of RUPs;
- 4) description of procedures, relevant authorities for carrying out compliance monitoring under an enforcement plan which includes: roles and procedures for conducting inspections, handling case development and enforcement actions, procedures for exchange of information and handling complaint referrals;
- 5) description and copy of separate agreements relevant to administering the certification plan and carrying out related compliance monitoring and enforcement actions.²

This option allows the tribe to choose which jurisdictions' (states, tribes and federal agencies) certifications will be valid in the tribe's areas of Indian country, and the extent of the tribe's involvement in the implementation of the certification plan (subject to the appropriate EPA regional office's approval).

To the extent that a tribe is precluded from exercising criminal activity authority, the Federal government will exercise primary criminal enforcement authority under a tribal-EPA agreement. The agreement must specify procedures whereby the tribe will provide potentially criminal investigative leads to EPA and/or other appropriate Federal agencies. This procedure must encompass, at a minimum, all circumstances in which the tribe is precluded from exercising relevant criminal enforcement authority.

How does a tribe pursue the tribal-EPA agreement option? What are the ramifications if a tribal-EPA agreement is not pursued?

Tribes interested in pursuing this tribal-EPA agreement option will submit their proposed agreements to the relevant EPA regional office(s) for review. Agreements become effective once signed by both the appropriate tribal authority and the EPA Regional Administrator(s).

Tribes can develop and submit a proposed agreement at any time before or after March 4, 2020. If a tribe's area of Indian country is subject to an existing certification plan (i.e., either an existing agreement with a state, an existing EPA-approved tribal certification plan, or an EPA plan for a particular area of Indian country) and the tribe submits a new

² See 40 CFR § 171.307(a)(1)(i)-(v) for further details.

proposed agreement with the relevant EPA region(s) by March 4, 2020, the existing certification plan will remain in effect until the new agreement becomes effective.³

If a tribe with an existing tribal certification plan does not submit a proposed tribal-EPA agreement (see 40 CFR § 171.307(a)) or a proposed tribal certification plan (see 40 CFR § 171.307(b)) by March 4, 2020, then the existing certification plan will cease to be effective on March 4, 2020, and the tribe's areas of Indian country will become subject to the 2014 EPA Plan. The tribe's areas of Indian country will then become subject to the revised EPA Plan pending EPA's implementation timeline, unless the tribe has chosen to opt out. See Option 4 for further details regarding opting out.

2. Certifications Issued by a Tribe (Tribal Certifications):

A tribe may choose to submit its own new or revised written certification plan for certifying private and commercial applicators to use or supervise the use of RUPs to the appropriate EPA region(s) for approval.⁴ A tribal certification plan is similar to state certification plans. The plan must include, per 40 CFR § 171.307(b)(1), a detailed map or legal description of the area(s) of Indian country covered by the plan as well as demonstrate that the plan meets all requirements of 40 CFR § 171.303 applicable to state 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 requirement for assessing criminal penalties.

To the extent that a tribe is precluded from exercising criminal activity authority, the Federal government will exercise primary criminal enforcement authority under a certification plan. The tribe and EPA region(s) will develop a procedure whereby the tribe will provide potential investigative leads to EPA and/or other appropriate Federal agencies. Per 40 CFR § 171.307(b)(2), all circumstances in which a tribe is precluded from exercising relevant criminal enforcement authority shall be described in a memorandum of agreement between the tribe and the EPA region(s).

³ For purposes of 40 CFR § 171.5 in Indian country, EPA considers a "certification plan approved by EPA" to include existing agreements with state pursuant to the former section 40 CFR § 171.10(a), as well as existing EPA-approved tribal certification plans, and any EPA plan for a particular area of Indian country plan. Existing certification plans approved by EPA before March 6, 2017, generally will remain in effect until March 4, 2020; if a tribe submits an amended certification plan to EPA for approval by March 4, 2020, its existing certification plan will remain in effect until EPA has reviewed and responded to the amended certification plan, but no longer than two years. However, in some cases, EPA may authorize further extension in its approval of an amended certification plan. In its approval of an amended certification plan, EPA will specify how much longer the existing plan may remain in effect while the tribe prepares to implement its amended certification plan. EPA will base each tribe's implementation period on the particular circumstances of that jurisdiction and the requests from the tribe but anticipates that most Tribes will be allowed two years from the date of EPA approval to fully implement their revised certification plans. 40 CFR § 171.5.

⁴ See 40 CFR § 171.307(b) for further details.

How does a tribe pursue the new/revised certification plan option? What are the ramifications if a new/revised certification plan is not pursued?

Tribes interested in pursuing this tribal certification option will submit electronically their EPA requests the proposed certification plans to the relevant EPA region(s). The certification plan will not be effective until the memorandum of agreement has been signed by the tribe and relevant EPA region(s).

A tribe with an existing certification plan (i.e., either an existing agreement with a state, an existing EPA-approved tribal certification plan, or an EPA plan for a particular area of Indian country such as the Navajo Nation) must submit either a revised plan or a proposed tribal-EPA agreement by March 4, 2020 to ensure its existing certification plan remains in effect after March 4, 2020 (see footnote #2 for additional information). Tribes that do not currently have an approved certification plan may submit a new plan any time before or after March 4, 2020.

If a tribe that has an existing certification plan does not submit either a revised tribal certification plan (see 40 CFR § 171.307(b)) or a proposed tribal-EPA Agreement (see 40 CFR § 171.307(a)) by March 4, 2020, then the tribe's existing certification plan will cease to be effective on March 4, 2020, and the tribe's areas of Indian country will become subject to the 2014 EPA Plan. The tribe's areas of Indian country will then become subject to the revised EPA Plan pending EPA's implementation timeline, unless the tribe has chosen to opt out. See option 4 for further details regarding opting out.

3. EPA-Administered Certification Plan (EPA Plan):

In any area of Indian country not covered by a new or existing certification plan (i.e., a tribal-EPA agreement, a tribal certification plan, an existing agreement with a state (per the former 40 CFR § 171.11(a)), an existing EPA-approved tribal certification plan, or an EPA plan for a particular area of Indian country such as the Navajo Nation), EPA may, in consultation with the affected tribe(s), implement an EPA-administered certification plan.⁵ Since 2014, EPA has administered the 2014 *EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides within Indian Country* (2014 EPA Plan) in areas of Indian country not covered by any other certification plan. EPA is in the process of updating the 2014 EPA Plan to address the standards and requirements of the 2017 Certification Rule, but, in the meantime, the 2014 EPA Plan is in effect in all areas of Indian country not covered by another certification plan. When the revised EPA Plan is implemented, it will apply in all areas of Indian country not covered by any other certification plan, except where a tribe has opted out. See option 4 for further details.

EPA intends to publish a notice of availability of the proposed revisions to the EPA Plan in a Federal Register notice. EPA expects to make the proposed revisions available for

⁵ See 40 CFR § 171.307(c) for further details.

public comment for a minimum of 45 days, and the Agency will make copies of the proposed plan available online/via email or via U.S. mail for hard copy upon request.

How does a tribe select the EPA Plan option?

Tribes without a tribal-EPA agreement; an agreement with a state (per the former 40 CFR § 171.11(a)); a Tribal Certification Plan; or an EPA plan for a particular area of Indian country, are currently covered by the 2014 EPA Plan and will automatically be covered by the revised EPA Plan pending EPA's implementation timeline, unless the tribe has chosen to opt out. See option 4 for further details.

Upon implementation, EPA will, as appropriate, enforce the revised EPA Plan in areas of Indian country where it is in effect. Tribes covered by the EPA Plan may impose additional restrictions or prohibitions on some or all uses of RUPs in their areas of Indian country through the enactment and implementation of tribal codes, laws, regulations or other applicable requirements. EPA anticipates that the revised EPA Plan will rely, at least in part, on certifications issued by adjacent states and tribes, but this reliance on state certifications would not give states enforcement jurisdiction in Indian country or over any federal certification issued pursuant to the EPA Plan. EPA has the authority to assess civil and criminal penalties, and to issue stop sale, use and removal orders, for conduct inconsistent with the Federal Insecticide, Fungicide, and Rodenticide Act and its associated regulations in Indian country.

4. Opt-out of the EPA Plan:

EPA will not implement the revised EPA Plan in any area of Indian country where, prior to the expiration of the public comment period provided in the Federal Register notice EPA intends to issue announcing the availability of the proposed revisions to the EPA Plan, the chairperson or equivalent elected leader of the relevant tribe provides EPA with a written statement of the tribe's position that the EPA Plan should not be implemented per 40 CFR § 171.307(c)(2). Opting out means that RUP use would generally be prohibited in any area of Indian country where the tribe requested this option and in the absence of a tribal-EPA agreement or EPA-approved tribal certification plan for that area of Indian country.⁶

⁶ A tribal opt-out would not preclude use of RUPs by federal agency employees certified under a federal agency plan. The only federal agencies currently approved to administer federal agency plans are the Department of Defense (DOD), Department of Energy (DOE), two separate plans from the United States Department of Agriculture (USDA/APHIS/PPQ, and USDA/Forest Service), and the Department of the Interior (DOI). The DOI plan covers three agencies within DOI – BLM, BIA and NPS – but no others.

How does a tribe pursue the opt-out option? What are the ramifications if the opt-out option is not pursued?

To opt out, EPA requests that tribes notify EPA by one of following methods:

- Submitting a written statement with signature of the tribe’s position to the docket during the comment period of the revised EPA Plan;
- Submitting a written statement with signature of the tribe’s position to:

Jacqueline E. Mosby
Director, Field and External Affairs Division
Office of Pesticide Programs
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (7506P)
Washington, D.C. 20460

- Submitting a written statement with signature of the Tribe’s position via email to the appropriate EPA regional office contact listed in the “Regional Contact Information” table below and cc: Emily Ryan at ryan.emily@epa.gov.

All opt-out written statements must be addressed to Jacqueline Mosby, Field and External Affairs Division Director, and signed by the tribe’s chairperson or equivalent elected leader of the tribe. The opt-out must be submitted before the close of the comment period for the proposed revisions to the EPA Plan.

If the opt-out option is not pursued, tribes without a tribal-EPA agreement, an agreement with a state (per the former 40 CFR § 171.11(a)), a tribal certification plan, or an EPA plan for a particular area of Indian country such as the Navajo Nation, are currently covered by the 2014 EPA Plan, and will automatically be covered by the revised EPA Plan when it takes effect.

Contact Information for the Regional Offices

The table below contains the regional contact information for EPA staff and can be used for region-specific questions. Navajo Nation is only served by EPA Region 9 and should contact the EPA Region 9 Pesticides Office.

For additional information regarding questions from this fact sheet or consultations issues, please contact Emily Ryan at ryan.emily@epa.gov.

Region	Contact	Region	Contact
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1	Robert Koethe 617-918-1535 Koethe.Robert@epa.gov	6	Greg Weiler 214-665-7564 Weiler.Gregory@epa.gov
2	Tara Glynn 732-906-6183 Glynn.Tara@epa.gov	7	Mike Daniels 913-551-7983 Daniels.Michael@epa.gov
3	Courtenay Hoernemann 215-814-2216 Hoernemann.Courtenay@epa.gov	8	Blake Huff 303-312-6718 Huff.Blake@epa.gov
4	Pat Livingston 404-562-9171 Livingston.Patricia@epa.gov	9	Katy Wilcoxon 415-947-4205 Wilcoxon.Katy@epa.gov
5	Amy Mysz 312-886-0224 Mysz.Amy@epa.gov	10	Bethany Plewe 206-553-1192 Plewe.Bethany@epa.gov

APPENDIX B

Examination standards at 40 CFR § 171.103(a)(2)

Requirements of the certifying authority:

- All examinations will be presented and answered in writing.
- All persons serving as proctors will be prohibited from taking an examination for which they are proctoring if they are also seeking pesticide applicator certification.
- All persons seeking certification will be required to present at the time of examination a valid, government-issued photo identification and/or the following types of identification as proof of identity and age: (fill in _____)
- All certification authority personnel will be required to keep exams secure before, during and after the exam period so candidates have access to the exam only in the presence of a proctor.
- Prohibit the use of reference materials not approved by this certifying authority.
- Notify all candidates of his or her examination results.

Requirements for proctors:

- Keep exams secure before, during and after the exam period so candidates have access to the exam only in the presence of a proctor.
- Give instructions on examination procedures to candidates before beginning examinations.
- Monitor examination candidates throughout examination periods.
- Prohibit any verbal or nonverbal communication between candidates and anyone other than the proctor during the examination period.
- Prohibit examination or reference materials from being copied or retained by any person not authorized by this certifying authority.
- Provide and collect certifying authority-approved reference materials for use during the examination.
- Examine reference materials after the examination is complete for portions that may have been removed, altered or destroyed.
- Report to the certifying authority any inconsistencies or irregularities such as cheating, use of unauthorized materials, and attempts to copy or retain materials.
- Conduct examination sessions in accordance with the following exam administration requirements required by this certifying authority: (Fill in _____).

APPENDIX C

Recertification standards at 40 CFR § 171.107

(a) Maintenance of continued competency.

- Each commercial and private applicator must recertify every five years or less from the date of certification.
- The recertification period for commercial applicators is:
- The recertification period for private applicators is:

(b) Process for recertification.

(1) By written examination.

- A certified applicator is found eligible for recertification upon passing a written examination designed to evaluate the level of competency that conforms to the examination standards in § 171.103(a)(2).
- Examinations for commercial applicators demonstrate the level of competency required by § 171.103.
- Examinations for private applicators demonstrate the level of competency required by § 171.105.

(2) By continuing education programs.

- A certified applicator may be found eligible for recertification upon successfully completing a continuing education program pursuant to the certifying authority's EPA-approved certification plan.
 - The quantity, content, and quality of a continuing education program to maintain applicator certification must be sufficient to ensure the applicator continues to demonstrate the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators.
 - (ii) Any continuing education course or event relied upon for applicator recertification must be approved by the certifying authority as being suitable for its purpose in the certifying authority's recertification process.
 - (iii) 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.

APPENDIX D

Standards for the Direct Supervision of Noncertified Applicators at 40 CFR § 171.201

(b) General requirements.

(1) Requirements for the certified applicator.

- (i) The certified applicator must have a practical knowledge of applicable Federal, State, and Tribal supervisory requirements, including any requirements on the product label and labeling, regarding the use of restricted use pesticides by noncertified applicators.
- (ii) The certified applicator must be certified in each category applicable to the supervised pesticide use.

(2) Requirements for the noncertified applicator. The certified applicator must ensure that each noncertified applicator using a restricted use pesticide under his or her direct supervision meets all of the following requirements before using a restricted use pesticide:

- (i) The noncertified applicator has satisfied the qualification requirements under paragraph (c) of this section.
- (ii) The noncertified applicator has been instructed within the last 12 months in the safe operation of any equipment he or she will use for mixing, loading, transferring, or applying pesticides.
- (iii) The noncertified applicator has met the minimum age required to use restricted use pesticides under the supervision of a certified applicator.
 - A noncertified applicator must be at least 18 years old, except that a noncertified applicator must be at least 16 years old if all of the following requirements are met:
 - (A) The noncertified applicator is using the restricted use pesticide under the direct supervision of a private applicator who is an immediate family member.
 - (B) The restricted use pesticide is not a fumigant, sodium cyanide, or sodium fluoroacetate.
 - (C) The noncertified applicator is not applying the restricted use pesticide aerially.

(3) Use-specific conditions that must be met in order for a noncertified applicator to use a restricted use pesticide. The certified applicator must ensure that all of the following requirements are met before allowing a noncertified applicator to use a restricted use pesticide under his or her direct supervision:

- (i) The certified applicator must ensure that the noncertified applicator has access to the applicable product labeling at all times during its use.
- (ii) Where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the certified applicator must ensure that any noncertified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and used correctly for its intended purpose.
- (iii) The certified applicator must provide to each noncertified applicator before use of a restricted use pesticide instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population) and the conditions of application (e.g., equipment, method of application, formulation) might increase or decrease the risk of adverse effects. The certified applicator must provide this information in a manner that the noncertified applicator can understand.
- (iv) The certified applicator must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment.
- (v) The certified applicator must ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under his or her direct supervision.

(vi) The certified applicator must be physically present at the site of the use being supervised when required by the product labeling.

(vii) If the certified applicator is a commercial applicator, the certified applicator must create or verify the existence of the records required by paragraph (e) of this section.

(c) Noncertified applicator qualifications. Before any noncertified applicator uses a restricted use pesticide under the direct supervision of the certified applicator, the supervising certified applicator must ensure that the noncertified applicator has met at least one of the following qualifications:

(1) The noncertified applicator has been trained in accordance with paragraph (d) [the “noncertified applicator training program” explained below] of this section within the last 12 months.

(2) The noncertified applicator has met the training requirements for an agricultural handler under (Worker Protection Standard -WPS regulations) 40 CFR 170.501 of this title within the last 12 months.

(3) The noncertified applicator has met the requirements established by a certifying authority that meet or exceed the standards in §171.201(c)(1) [The “noncertified applicator training program” explained below in (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.

(d) Noncertified applicator training program.

(1) General noncertified applicator training must be presented to noncertified applicators either orally from written materials or audiovisually. The information must be presented in a manner that the noncertified applicators can understand, such as through a translator. The person conducting the training must be present during the entire training program and must respond to the noncertified applicators’ questions.

(2) The person who conducts the training must meet one of the following criteria:

(i) Be currently certified as an applicator of restricted use pesticides under this part.

(ii) Be currently designated as a trainer of certified applicators or pesticide handlers by EPA, the certifying authority, or a State, Tribal, or Federal agency having jurisdiction.

(iii) Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of handlers under (WPS) 40 CFR part 170.

(3) Content of noncertified applicator training materials.

(e) Recordkeeping.

(1) Commercial applicators must create or verify the existence of records documenting that each noncertified applicator has the qualifications required in paragraph (c) Training for noncertified applicators or WPS handler training within last 12 months, requirements of certifying authority, or certified applicator of this section. For each noncertified applicator, the records must contain the information appropriate to the method of qualification as provided in paragraphs (e)(1)(i) through (e)(1)(iv).

(i) If the noncertified applicator was trained in accordance with paragraph (c)(1) of this section, the record must contain the following information:

(A) The noncertified applicator’s printed name and signature.

(B) Date training requirement was met.

(C) The name of the trainer.

(D) The title or a description of the training provided.

(ii) If the noncertified applicator was trained as an agricultural handler under 40 CFR 170.501 in accordance with paragraph (c)(2) of this section, the record must contain all of the information required at 40 CFR 170.501(d)(1).

(iii) If the noncertified applicator qualified by satisfying the requirements established by the certifying authority, the record must contain the information required by the certifying authority.

(iv) If the noncertified applicator is a certified applicator who is not certified to perform the type of application being conducted or not certified in the jurisdiction where the use will take place, as described in paragraph (c)(4) of this section, the record must include all of the following information:

- (A) The noncertified applicator's name.
- (B) The noncertified applicator's certification number.
- (C) The expiration date of the noncertified applicator's certification.
- (D) The certifying authority that issued the certification.

(2) The commercial applicator supervisor must create or verify the existence of the record containing the information in paragraph (e)(1) [method of qualification, etc.] of this section before allowing the noncertified applicator to use restricted use pesticides under his or her direct supervision.

(3) The commercial applicator supervisor must have access to records documenting the information required in paragraph (e)(1) of this section at the commercial applicator's principal place of business for two years from the date the noncertified applicator used the restricted use pesticide.

(f) Exceptions. The tribe may exempt the following persons from the supervision requirements described in this Appendix D:

(1) Persons conducting laboratory research involving restricted use pesticides.

(2) Doctors of Medicine and Doctors of Veterinary Medicine applying restricted use pesticides to patients during the course of ordinary practice of those professions.

APPENDIX E

Procedures for Reliance on Certifications Issued by Other Certifying Authorities at 40 CFR § 171.303(a)(9)

The certifying authority will:

- (i) rely only on valid current certifications that are issued under other approved state, tribe, or federal agency certification plan.
- (ii) examine the standards of competency used by the state, tribe, or federal agency that originally certified the applicator and will determine that, for each category of certification that will be accepted, they are comparable to its own standards.
- (iii) have a mechanism to terminate an applicator's certification upon notification that the applicator's original certification terminates because of a conviction under section 14(b) of FIFRA or was subject to a final order imposing a civil penalty under section 14(a) of FIFRA.
- (iv) issue an appropriate credential or document to the applicator.