



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 171

[EPA-HQ-OPP-2021-0831; FRL-9134.1-04-OCSPP]

RIN 2070-AL01

Pesticides; Certification of Pesticide Applicators; Further Extension to Expiration Date of Certification Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is extending the deadline by which existing certification plans for the certification of restricted use pesticide (RUP) applicators may remain valid until either EPA has approved revised certification plans that conform to the updated federal standards or they expire, whichever is earlier, to November 4, 2023. Federal, state, territory, and tribal certifying authorities with existing certification plans are required to complete revisions to their existing plans conforming with the updated federal standards for RUP applicator certification, and the regulations establish the deadline by which the existing plans will expire unless the revised plans are approved by the Agency. EPA is extending this deadline to allow additional time for any remaining proposed certification plan modifications pending approval to continue being reviewed and approved by EPA without interruption to federal, state, territory, and tribal certification programs or to those who are certified to use RUPs under those programs.

DATES: This final rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2021-0831, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency

Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566-1744. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Carolyn Schroeder, Pesticide Re-evaluation Division (Mail Code 7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-2376; email address: schroeder.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

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

- Agricultural Establishments (Crop Production) (NAICS code 111);
- Nursery and Tree Production (NAICS code 111421);
- Agricultural Pest Control and Pesticide Handling on Farms (NAICS code 115112);

- Crop Advisors (NAICS codes 115112, 541690, 541712);
- Agricultural (Animal) Pest Control (Livestock Spraying) (NAICS code 115210);
- Forestry Pest Control (NAICS code 115310);
- Wood Preservation Pest Control (NAICS code 321114);
- Pesticide Registrants (NAICS code 325320);
- Pesticide Dealers (NAICS codes 424690, 424910, 444220);
- Industrial, Institutional, Structural & Health Related Pest Control (NAICS code 561710);
- Ornamental & Turf, Rights-of-Way Pest Control (NAICS code 561730);
- Environmental Protection Program Administrators (NAICS code 924110); and
- Governmental Pest Control Programs (NAICS code 926140).

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

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

This action is issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136-136y, particularly sections 136a(d), 136i, and 136w.

C. What action is the Agency taking?

This action extends the expiration date for existing certification plans at 40 CFR 171.5(c) from November 4, 2022, to November 4, 2023. No other changes to the certification standards and requirements specified in 40 CFR part 171 are being made in this rulemaking.

D. Why is the Agency taking this action?

Without the deadline extension, federal, state, territory, and tribal certification programs will expire if their revised certification plans are not approved by the recently modified regulatory deadline of November 4, 2022 (Ref. 1). Applicators formerly certified under such expired plans will no longer be allowed to use RUPs. While all initial draft plans have been reviewed and returned to the federal, state, territory, and tribal agencies (certifying authorities)

for further revision, the recent extension of eight months (which extended the original deadline of March 4, 2022, to November 4, 2022) is not sufficient time for all certifying authorities to respond to EPA comments and to complete the approval process. Additional time is needed for EPA to work closely with the certifying authorities whose plans are still pending approval to assure that their proposed certification plan modifications will meet current federal standards.

As of July 8, 2022, EPA has approved 7 out of 68 revised certification plans and estimates that approximately half of the plans should be approved before November 2022. Although significant progress has been and continues to be made in the development of revised plans and EPA's subsequent reviews and approvals, COVID-19 resource constraints early in the review process had impacted the time certifying authorities have had to respond to EPA's comments and the Agency's ability to work with certifying authorities to assure that EPA can approve their plans by the regulatory deadline, thereby causing delays in reviews, revisions, and approvals. EPA has assessed the progress and pace of final revisions and approvals and expects the average certification plan approval process to be completed approximately a year after certifying authorities have received feedback from EPA, though this could vary depending upon individual circumstances as indicated in the responses to the public comments in Unit III. Given these assessments, EPA anticipates that at least 30 out of 68 plans might not be approved by the November 2022 deadline due in part to receiving feedback from EPA later than previously expected or due to complex issues that still need to be addressed. The plans most at risk of missing the November 2022 interim final rule (IFR) deadline account for approximately 39% of commercial applicators and 51% of private applicators, or about 45% of all currently certified applicators in the U.S. To avoid disruptions to a significant portion of the country, further collaboration is still needed between EPA and the remaining certifying authorities to finalize and approve all plans. EPA has been and will continue working expeditiously toward approving and supporting the implementation of plans that meet the current federal standards and has been providing periodic notifications to the public in the *Federal Register* and on EPA's website

when those approvals have occurred. EPA intends to maintain this level of transparency as it works toward finalizing the remaining plans and aims to complete this process as quickly as possible. The public may access the most current information about the Agency's progress at <https://www.epa.gov/pesticide-worker-safety/certification-standards-pesticide-applicators> (Ref. 2).

EPA finds that an additional one-year extension of the deadline is needed to assure that applicators certified under a plan that would otherwise expire will continue to be authorized to use RUPs without interruption and to provide the remaining certifying authorities with plans pending approval with adequate time to provide responses to EPA comments on their plans. The extension will also provide additional time for EPA to work more closely with the certifying authorities to address any remaining feedback and ensure their plans meet the updated federal standards at 40 CFR Part 171. EPA believes that the additional year will provide enough time to complete rolling approval of all certification plans, while also providing enough time to assess the individual-based needs of the remaining state, territory, tribal and federal plans up to the new regulatory deadline.

E. What are the estimated incremental impacts of this action?

Incremental impacts of the extension to the regulatory deadline are generally positive, because the extension provides certifying authorities and EPA with more time to ensure that all modified plans meeting the minimum federal requirements are in place, while failure to extend the regulatory deadline would likely have significant adverse impacts on the certifying authorities, the economy, public health, and the environment where plans may expire without the extension (see discussion in Unit II.B.).

The 2017 Certification of Pesticide Applicators Rule (2017 CPA Rule) (Ref. 3) established the standards for certifying RUP applicators and also set a deadline with specific consequences if a certification plan were to expire. Therefore, EPA relies on information from the 2017 CPA Rule to assess the incremental economic impacts of this proposed rule to extend

the recently modified deadline of November 4, 2022 (Ref. 1), to November 4, 2023. The impacts of the extension are that the implementation costs borne by the certifying authorities will be expended over an additional period of time and some of the costs to commercial and private applicators may be delayed. Some of the benefits of the rule (*e.g.*, reduction in acute illnesses from pesticide poisoning) are postponed as the implementation of some plans may be delayed while EPA works with the remaining certifying authorities toward approval of their revised certification plans.

1. *Cost to certifying authorities.* The 2017 CPA Rule provided a compliance period for certifying authorities to develop, obtain approval, and implement any new procedures, regulations, or statutes to meet the new federal standards. The 2017 CPA Rule further provided that existing plans could remain in effect until March 4, 2022, which was recently extended to November 4, 2022 (Ref. 1), only to the extent specified in EPA's approval of a modified certification plan; EPA did not explicitly set a date for full implementation of the new programs. Generally, certifying authorities can begin implementing revisions to their programs when they are approved by EPA; however, depending on individual state, territory, or tribal procedural requirements and existing programmatic infrastructure, portions of revised certification programs may be and, in some cases, already are being implemented in support of the 2017 CPA Rule requirements. All certifying authorities submitted their draft revised certification plans to EPA by the March 2020 submission deadline established in the 2017 CPA Rule. Shortly after the March 2020 deadline, the COVID-19 public health emergency disrupted the expected schedule of the EPA's review and approval of the draft plans. EPA and certifying authorities had to temporarily divert their resources to address pandemic-related issues, resulting in delays of revised plan reviews, approvals, and implementation than was originally anticipated. All draft plans have since undergone a detailed review at EPA and have been returned back to the certifying authorities for responses, with some having been approved by EPA. Thus, only part of the cost to certifying authorities estimated in the 2017 CPA Rule has presently been incurred and

some of the cost will be expended during the additional extension period for those plans awaiting approval by EPA. Therefore, this rule is not expected to significantly change the costs to certifying authorities estimated in the 2017 Economic Analysis (EA) (Ref. 4).

2. *Cost to certified applicators.* The other sectors affected by the 2017 CPA Rule (e.g., commercial and private applicators) do not incur any costs until revised certification plans take effect. Once the revised plans take effect, the 2017 EA estimated that commercial applicators and private applicators would incur annualized costs of \$16.2 million and \$8.6 million, respectively, to meet the new certification standards. EPA expects that around half of the plans might not be approved by November 2022, so some of these costs could be delayed as the remaining plans are approved and implemented over a longer period of time. Not all costs to certified applicators will be delayed, as a number of plans have or will soon be approved by EPA. Moreover, some certifying authorities have already begun work toward implementing their plans or will be able to start implementing changes conforming to the 2017 CPA Rule before their plan's approval.

3. *Potentially delayed benefits of the 2017 CPA Rule.* The delay in the approval of revised certification plans may also delay some benefits that would have otherwise accrued if certification plans were approved and implemented by the deadline established in the 2017 CPA Rule, as assessed in the 2017 EA. In 2017, EPA estimated that implementing the new federal certification requirements would reduce acute illness caused by exposure to RUPs, based on an analysis of pesticide incidents assuming that about 20% of poisonings are reported (a plausible estimate based on the available literature used for the 2017 EA regarding occupational injuries or chemical poisoning incidents). Incidents may result in harms to applicators, persons in the vicinity, and the environment. Reported incidents analyzed in the 2017 EA most commonly cited exposure to the applicator or farmworkers in adjacent areas. Based on avoided medical costs and lost wages, the annualized benefits of the rule were estimated to be between \$51.1 and \$94.4 million. In addition, EPA expected that improved training would also reduce chronic illness among applicators from repeated RUP exposure and would benefit the public from better

protections from RUP exposure when occupying treated buildings or outdoor spaces, consuming treated food products, and reducing the impact on non-target plants and animals. To the extent that this rule delays implementation of the 2017 CPA Rule, it will delay accrual of some of those benefits, but only partially as a number of plans have been approved and are currently being implemented.

Not all the benefits of certification plan revisions will be delayed for a period of time up to November 4, 2023, however, since some programs have been approved and begun implementation or will be able to start implementing changes sooner than the new expiration date due as they approach approval. Certifying authorities can begin implementing their revisions to their programs as soon as they are approved by EPA, and many have begun that work. Since the most recent extension, EPA plan approvals have begun, with 7 certification plans having been approved as of July 8, 2022, and more will continue to be approved on a rolling basis. In some jurisdictions, portions of the 2017 CPA Rule revised certification requirements, such as imposing minimum age requirements and updating manuals and exam administration procedures, are already being implemented, resulting in a number of the benefits of the 2017 CPA Rule already being realized in advance of full plan approvals. Additionally, some certifying authorities were forced to make changes to their existing certification programs to accommodate COVID-19 protocols, all of which were required to meet or exceed the new requirements and standards established in the 2017 CPA Rule. While the new extension will run until November 2023, EPA anticipates approving plans on a rolling basis to conclude its approval process as soon as possible.

The impact of plans expiring absent EPA's approval of modified plans has far-reaching implications across many business sectors, including but not limited to the agricultural sector, importation and exportation business, and structural pest control (*e.g.*, termite control), and could potentially impact all communities and populations throughout the U.S. in various ways as discussed in Unit I.E.4. In addition to the potential delay of benefits that would result from this

extension, EPA and certifying authorities have already invested significant resources in the preparation and review of plan modification that would fully implement the 2017 CPA Rule. It is EPA's considered judgement that the sunk cost of these investments, taken together with the significant costs of not extending the deadline for the remaining plans to be completed as discussed in Unit I.E.4., outweigh the delayed benefits in those jurisdictions. EPA has approved 7 certification plans to as of July 8, 2022, with more to follow shortly after, and EPA continues to work expeditiously with certifying authorities to review and approve the remaining plans on a rolling basis. EPA's ongoing collaboration with the certifying authorities has and will continue to result in modified plans that are protective of the environment and human health, including the health of certified pesticide applicators and those under their direct supervision, and will ensure that certified applicators are trained to prevent bystander and worker exposures as contemplated in the 2017 CPA Rule.

4. *Costs of not extending the deadline.* If the existing regulatory deadline is not extended further, it is likely that EPA will be unable to approve some of the state, territory, tribal, and federal agency certification plans that may still need additional work and/or coordination beyond the recently revised November 2022 deadline, resulting in expiration of these plans. EPA would have to take responsibility for administering certification programs for a portion of the country where plans had expired. A gap in coverage would likely exist between when these certification plans expire and when EPA could fully implement EPA-administered certification programs, resulting in RUPs being unavailable for use in those places during the 2023 growing season and potentially through the end of 2023 or longer. It is also unlikely that EPA's certification programs would offer the same availability and convenience as those offered by state, territorial, and tribal certifying authorities, so some applicators could face higher costs (*e.g.*, due to time commitment changes, new travel expenses to attend trainings, frequency of access, etc.) or be unable to obtain certification to apply RUPs. Once the EPA-administered certification plans are in place, they may, in some cases be less protective than state plans would be, as many state

plans include requirements that are more protective than the EPA minimum requirements. The benefits of these more protective state requirements will be lost if the deadline is not extended and EPA takes over parts of the country's certification programs.

Furthermore, the expiration of certification plans could lead to confusion and potential enforcement issues when certifications that were formerly valid suddenly expire. It is also unlikely that EPA's certification programs could offer the depth of specialization found in many State, territorial and tribal certifying programs, which may be tailored to the particular pest control and human health needs commonly found in these localities. Thus, applicators certified under EPA programs would only be assessed for competency at the minimum federal standards and may not receive the specialized training that state, territorial, and tribal certifying authorities often provide. In addition, many states require professional applicators to be trained and licensed to apply general use pesticides and it is unclear to what extent states would be able to support those programs if they were to lose authority to certify RUP applicators because in some cases, both programs are intertwined.

Additionally, EPA would be compelled to expend time and resources in establishing the infrastructure to administer these certification programs, which would further delay coordination with certifying authorities whose plans were either approved and would be in the process of being implemented or are awaiting approval. This is likely to cause significant disruption for agricultural, commercial, and governmental users of RUPs, and could have consequences for pest control in a broad variety of areas, including but not limited to the control of public health pests (*e.g.*, mosquito control programs), pests that impact agriculture and livestock operations, structural pests (*e.g.*, termite control), pests that threaten state and national forests, and pests in containerized cargo. Applicators who use RUPs and are licensed under affected programs would likely lose work and income as a result.

II. Background and Goals of this Rulemaking

A. Background

On December 20, 2021, EPA issued an IFR that extended the original expiration date from March 4, 2022, to November 4, 2022 (Ref. 1). Unit II. of the IFR's preamble provides a summary of the 2017 CPA Rule and related background, as well as a robust discussion of the various circumstances that prompted the extension and the rationale the Agency cited for issuing the IFR.

On February 7, 2022, EPA proposed to extend the November 4, 2022 deadline up to but not longer than November 4, 2024 (Ref. 5). EPA proposed this additional extension because the Agency recognized that some certifying authorities and EPA would potentially need more time to collaborate on and address issues raised during review of the plans, and the Agency did not have enough information to adequately assess how much additional time would be needed to complete this process at the time the proposal was published. EPA expressly requested public comment on the need for and appropriate length of a longer extension. EPA has taken these public comments, which are addressed further in Unit III., into consideration in concert with the overall status of the plan approval process to date.

B. Goals of this Rulemaking

An additional extension of the expiration date for existing certification plans is needed to ensure that any remaining federal, state, territory, and tribal agencies waiting on certification plan approval have sufficient time to revise their certification plans in response to EPA's feedback on their draft certification plans. Absent an extension of this deadline, it is likely that a number of State, territory, and tribal agency certification programs will terminate, causing severe disruption for agricultural, commercial, and governmental users of RUPs. Failure to extend the regulatory deadline, and the resulting expiration of many certification programs, would significantly limit access to certification, thereby limiting access to RUPs that are necessary for various industries that rely upon pest control.

If EPA does not act to extend the regulatory deadline, many existing certification plans that remain in effect pending EPA's review of submitted certification plan modifications would

expire on November 4, 2022, in which case FIFRA (7 U.S.C. 136i(a)) requires that EPA provide RUP applicator certification programs in states (including territories) where a state certification plan is not approved. If EPA had to take on the burden of administering certification programs for much of the country, it would draw resources away from concluding the Agency's approval process for the remaining plans and the Agency's ability to support certifying authorities with implementation of the certification plans that are approved before the November 2022 deadline. In addition, it would take significant time and resources to set up the infrastructure for such federal certification programs and to train, test, and certify applicators, which would likely result in RUP use being curtailed in affected states. It is unlikely that EPA would be able to establish these federal certification programs before the start of the 2023 growing season, which would have potentially devastating impacts on the agricultural sector in the parts of the country without approved plans. Moreover, once EPA-administered state certification programs were established, it is unlikely that they would operate at the same capacity as existing state programs, but rather, would provide fewer and less localized opportunities for applicators to satisfy certification requirements. As a result, significant impacts are expected on the pest control industry in jurisdictions without an approved plan, as existing certifications will no longer be valid and will need to be replaced with federal certifications, likely creating economic and public health ramifications in a wide range of sectors such as agricultural commodity production, public health pest control, and industrial, institutional, and structural pest control. RUP access in this scenario would be minimal for most, if not all, of the 2023 growing season, and significant disruptions could extend even further. This action would ensure that any remaining work can be completed with minimal impacts.

III. Public Comments

Two 30-day public comment periods were held in relation to extending the expiration date of existing plans. The first comment period closed on January 20, 2022, which were in response to the IFR extending the original expiration date for existing plans from March 4, 2022,

to November 4, 2022 (Ref. 1). The second public comment period closed on March 9, 2022, which addressed the NPRM to further extend the expiration date up to but not longer than an additional two years, from November 4, 2022, to November 4, 2024 (Ref. 5). Between the two public comment periods, EPA received 22 submissions to the docket, comprising of 20 different commenters. Commenters included members of the public, state pesticide regulatory agencies and associations, an industry stakeholder, and farmworker advocacy organizations. A summary of and EPA's responses to the comments both in support of and in opposition to the proposed two-year extension are addressed in Units III.A. and B., respectively.

A. Support for a Two-year Extension

1. General support from members of the public.

a. Summary of comments. EPA received 12 general comments from members of the public, 11 of which provided comments that expressed overall support of EPA's proposal to extend the deadline up to two years, while one other provided comments not specific to this action. The comments submitted acknowledged the challenges faced by many during the COVID-19 public health emergency, and the impacts it has had on both certifying authorities and EPA's ability to review, respond, and approve certification plans. Some of these commenters stated that extensive and thorough review is needed to ensure public safety and to minimize any risks, and that these reviews should not be rushed through the process. Some of the commenters also referenced EPA's assessment in the NPRM on the potential impacts across the various sectors of the pest control industry, agriculture, and the public overall should existing plans expire without an approved plan in place, and that two years to complete these reviews should be enough time to complete reviews while avoiding disruptions throughout the country.

b. EPA response. EPA appreciates the commenters' general support of the proposed rule to extend the deadline for amended certification plans to be approved by the Agency. EPA agrees with the commenters that additional time is needed to ensure that all certification plans are thoroughly reviewed and meet or exceed the updated federal standards for the certification of

RUP applicators. While EPA initially proposed an extension of up to but not longer than two years, in light of other comments received in response to the NPRM and the progress the Agency has made on approving plans to date, EPA has determined that an extension of one additional year, to November 4, 2023, should be sufficient time to conclude its approval process for all certification plans submitted to the Agency.

2. Support for an extension of two years from State Lead Agencies (SLAs) and industry stakeholders.

a. Summary of comments. EPA received one comment from an industry stakeholder, four comments from SLAs, and two comments from the Association of American Pesticide Control Officials (AAPCO). In general, these commenters expressed support for an extension of two years to November 4, 2024. Their support for a two-year extension revolved around the need to maintain continuity for pesticide applicators and expressed general concerns on both the economic and environmental aspects of plans expiring if all are not approved by the revised expiration date established in the IFR. More specific comments and EPA's responses are provided in the following sections.

i. The IFR extension to November 4, 2022, is insufficient. AAPCO and the three SLAs who submitted comments to EPA all expressed support for EPA's IFR extending the deadline to November 4, 2022, given the pressures that COVID-19 had on completing EPA reviews and approvals and the limited amount of time the certifying authorities had to respond to EPA's feedback leading up to the original deadline of March 4, 2022. However, all expressed concern that the additional eight months provided in the IFR would not be enough time for all certifying authorities to review and respond to EPA's input and for EPA to approve them before the existing plans are set to expire.

The commenters noted that slightly more than half of the plans submitted to EPA at the time of the IFR publication had been returned to the certifying authorities, and that the remaining would likely not be returned to the certifying authorities until February 2022 according to the

IFR assessments. In their submitted comments, AAPCO reported that in a survey conducted of its membership that concluded on February 25, 2022, some detailed reviews took EPA 17 to 22 or more months to return since the certifying authorities first submitted their plans to EPA, with four certifying authorities indicating they had not yet received their detailed review comments prior to the conclusion of their survey. As of February 25, 2022, approximately six certifying authorities indicated they had returned their revisions for approval, and that no certifying authority had yet received approval from EPA. Based on the time it has taken to complete the detailed review of the plans and to revise plans in response to EPA's reviews, the commenters felt that the additional eight months in the IFR did not seem adequate for EPA to complete the final reviews and approval processes for all of the revised plans. The commenters acknowledged that extensive review is necessary to ensure revised plans meet the requirements of the 2017 CPA Rule, and that the level of detail and the length of time until completion of EPA's review and approval ensures that revised plans meet the federal requirements and provide the necessary protections to pesticides applicators, those under their supervision, and bystanders. The commenters also recognized the impacts COVID-19 had on EPA's ability to complete the review and approvals by the original deadline and believe the impacts will potentially impacting conclusion of reviews leading up to the revised IFR deadline.

Given that EPA needed more time to complete its reviews, the SLA commenters requested that EPA acknowledge the impacts of COVID-19 on their programs and resources and to provide the same time allowances the Agency took to review the plans so that certifying authorities can appropriately respond to the extensive comments and ultimately implement the final approved plans. Specifically, commenters cited the challenges certifying authorities have faced attempting to overhaul their certification plans, such as the complexities and administrative hurdles it faces such as on-going state-level legislative factors, and these particular challenges must be considered in the review and approval process. The commenters did not believe that all certifying authorities, especially those who did not receive EPA input until February 2022, could

complete these tasks by the November 2022 deadline, and that the certifying authorities that received their plans later should be given an equitable amount of time to respond to comments.

ii. Requests for a two-year extension to November 4, 2024. AAPCO, the SLAs, and the industry stakeholder all recommended that EPA extend the deadline for two years to November 4, 2024. Citing the delays that were discussed in comments in Unit III.A.2.b., commenters stated that while they are committed to implementing the changes under the 2017 CPA Rule, it is conceivable that an additional round of review to verify that any remaining issues have been addressed by the certifying authority could push the plan approval process beyond the IFR expiration date of November 4, 2022. Given the complexity of issues across the states, differences in legislative schedules and bills and administrative requirements that impacts state licensing programs, the commenters felt that these additional considerations warrant a further extension of two years to avoid potential negative impacts to farmers, ranchers, foresters, structural pest control professionals, and other industries and the public.

b. EPA response. EPA agrees with the commenters that additional time is needed to ensure that all certification plans are thoroughly reviewed and meet or exceed the updated federal standards for the certification of RUP applicators. EPA also agrees with the commenters that certifying authorities who received their plans late should be given adequate time to review and respond to EPA's comments and acknowledges that there continues to be a need for EPA and some of the certifying authorities to collaborate on completing their plans. EPA agrees with the commenters that an additional extension ensures continual protection of pesticide applicators, provides EPA and certifying authorities the time needed to continue to work together to realize approval of plans and ultimately successful implementation of the 2017 CPA Rule, and avoids unintended economic and environmental risks associated with lapsed certification plans in any jurisdiction without an approved certification program in place.

While EPA initially proposed an extension of up to but not longer than two years, in light of other comments received in response to the NPRM and the progress the Agency has made on

approving plans to date, EPA has determined that an extension of one additional year, to November 4, 2023, should be sufficient time to conclude its approval process for all certification plans submitted to the Agency. Based on the timelines from EPA's most recently approved plans and ongoing collaboration with the certifying authorities, EPA estimates that most revisions by the certifying authorities, and EPA's second pass review and collaboration with the certifying authorities to complete the approval process, will take on average a year after having been returned to the certifying authority. The certifying authorities most at risk of not having their plans approved are those who had received their plans late, as indicated in the comments submitted by AAPCO. Additionally, several other plans with more complex issues or administrative requirements are expected to take longer to approve than average and will likely also miss the November 2022 deadline. As noted in one of the state agency's comments, EPA recognizes that there may be unforeseen circumstances or additional complexities within each state, tribe, or territory's internal legislative or administrative processes that may result in the final revision and approval process taking additional time beyond EPA's average estimates. While EPA expects to approve around half of the plans before November 2022, the Agency has identified at least 30 out of 68 plans that are the most at risk of missing the IFR deadline of November 4, 2022. The Agency is confident, however, that all plan approvals can be concluded before the new deadline of November 4, 2023.

B. Opposition to a Two-year Extension

EPA received three comments in opposition to the extension from two groups, which included a group of farmworker advocacy organizations who provided joint comments on both the IFR and NPRM, and a group of former regulators who provided comments on the NPRM. In summary, both commenters opposed the proposal to extend the existing deadline for an additional two years up to November 4, 2024, though each had different perspectives on appropriate approaches and length of potential extensions, which are addressed in the following sections.

1. Delay beyond November 4, 2022, is unacceptable and would undermine 2017 CPA Rule.

a. Summary of comments. The farmworker advocacy commenters state that at the time EPA adopted the 2017 CPA Rule, the previously existing rule had not been meaningfully updated in approximately 40 years and were under-protective, and that the 2017 CPA Rule imposed stricter certification and training standards that were necessary to meet the FIFRA mandate to ensure that RUPs do not cause unreasonable adverse effects to applicators, workers, the public, or the environment. The commenters state that until all plans are updated and approved by EPA as consistent with 2017 CPA Rule, applicators, workers, their families, communities, and others will remain at heightened risk of harm from RUPs.

Among the changes made in the 2017 CPA Rule, the farmworker advocacy groups cited requirements that were particularly important to their organizations, members, and constituents, including: Increasing the minimum age of 18 to be certified as commercial or private applicator as well as performing work as a non-certified applicator under their direct supervision; The creation of new categories for those performing aerial pest control, soil fumigation, and non-soil fumigation to increase training content to avert drift during spray applications; and, The addition of training requirements for non-certified applicators who work under the direct supervision of a certified applicator to ensure they have frequent and adequate training of pesticides and pesticide use. The farmworker advocacy commenters felt that so long as certifying authorities implementing certification programs exclude some of the requirements in the 2017 CPA Rule, high rates of preventable acute and chronic illness will persist among RUP applicators and the broader public. The commenters also referenced *PCUN v. Pruitt* (Ref. 6) in which EPA lost a previous attempt at extending the 2017 CPA Rule's effective date. The commenters relied on the opinion for this case, which stated that if implementation of the 2017 CPA Rule were to be delayed, individuals will continue to be exposed to these dangers and will not benefit from the more stringent regulations provided by the revised regulations, as additional support for why an

additional extension to the existing plans should not be finalized.

Commenters who opposed the additional two-year extension did not believe that EPA adequately explained why a two-year extension (from November 4, 2022, up to November 4, 2024) was necessary, and that it is difficult to understand the justification of extending the deadline to what amounts to a nearly three-year extension beyond the original deadline of March 4, 2022. Commenters urged that it would be helpful to have details on the status of EPA's review of all 68 submissions, and when the Agency estimates its reviews and approvals to be completed, in order to understand the need for an additional extension to the deadline.

In the comments submitted jointly by farmworker advocacy organizations, the commenters expressed disappointment by the IFR extension and were not persuaded that there was a need for any extension of the deadline beyond November 4, 2022. The commenters stated that under the 2017 CPA Rule, the Agency had two full years since the March 2020 deadline for receiving states, territories, and tribes' draft updated certification plans to review those plans, work with the submitters as needed to revise them, and then approve compliant plans before the old, non-compliant plans expired. They also argue that while EPA points to COVID-19 to justify its IFR extension, the dangers farmworkers, agricultural workers, and non-certified applicators face from COVID-19 underscore why the new standards and training should go into effect without further delay, noting that agricultural workers are at greater risk from COVID-19 than the general public for a variety of reasons, including that they have had less access to vaccines, are often unable to miss work when they are sick, have limited ability to social distance, and often lack access to a supply of adequate masks. Moreover, they state that a disproportionate number of agricultural workers suffer from health problems, such as obesity and high blood pressure, which predispose them to a more serious course of COVID if they become infected. As a result, they argue that agricultural workers' exposures to certain pesticides can result in inflammation and other health effects that make them even more susceptible to getting COVID-19, and more likely to have serious effects if they do. The commenters expressed a concern that

delayed implementation of the 2017 CPA Rule will increase agricultural workers' exposure to RUPs, thereby compromising their health and further jeopardizing their ability to avoid COVID-19 infection or recover quickly. The commenters also suggest that even if COVID-19 could justify an extension, the eight-month extension adopted in the IFR should be sufficient to make up for the lost time in the initial months of responding to the pandemic.

The farmworker advocacy groups go on to state that based on EPA's assessment and representation of the progress it has made in the NPRM, citing that all plans would be returned to the certifying authorities in February 2022, and that it appeared to be on track to meet the November 2022 deadline, that an additional two-year extension was unnecessary. The commenters stated that they understood that once the plans were returned to the certifying authorities, EPA's work would not be done because those certifying authorities will need to respond to EPA's comments and make revisions so that their certification plans are approvable, and that EPA will need to be a collaborator in this process, and then approve the plans once compliant. However, the commenters stated that if EPA treats this work as a priority, then they believe the extension EPA has already given itself in the IFR should be sufficient time to complete this process, especially given the significant progress that the Agency has already claimed had been made in the development of revised plans and EPA's subsequent reviews.

b. EPA response. EPA agrees with the commenters about the importance of the 2017 CPA Rule and the beneficial impacts that updated certification plans will provide to applicators, workers, the public, and the environment, and the Agency is prioritizing its efforts to ensure that its reviews and any subsequent revisions are thorough before approving the plans. These revisions were intended to reduce occupational pesticide exposure and the incidence of related illness among certified applicators, noncertified applicators working under their direct supervision, and agricultural workers, and to ensure that when used according to their labeling, RUPs do not cause unreasonable adverse effects to applicators, workers, the public, or the environment. Discussions with state regulatory partners and key stakeholders over many years,

together with EPA's review of incident data, led EPA to make these important changes, and implementing these changes is a top priority for the Agency.

While EPA found that the 2017 CPA Rule changes were necessary to reduce occupational and bystander exposures and stands by the administrative record for that rule, the Agency finds that it is also necessary to take into account the economic, social, and environmental costs and benefits of the use of any pesticide. Though the impacts of potentially delayed benefits are an important consideration on any length of time EPA extends the expiration date of existing plans, this rulemaking must also take into consideration the potential economic, social, and human health impacts associated with the potential for any of the state, tribal, or territory programs to expire, and the potential impact that may have on business and industries to those who rely on their pest control services, including the general public. The Agency has discussed these concerns and issues more comprehensively in Unit I.E.

EPA notes that when it issued the NPRM, the Agency did not have enough information to assess the costs and impacts of any extension nor how much time would be needed to complete all reviews, and therefore, the Agency used a qualitative assessment with broad assumptions that all certifying authorities would need additional time beyond November 2022. However, the Agency stated that it intended to conclude all of its detailed reviews by February 2022 and to begin approving plans shortly after once they were returned to the certifying authorities. EPA also committed in the proposal to work expeditiously toward concluding this process to limit the potential impacts of delayed implementation, with the first plans being approved in March 2022. As of July 8, 2022, EPA has approved 7 plans and continues to make considerable progress toward approving plans that certifying authorities can begin to implement or work toward implementation immediately. EPA expects to approve approximately half of the certification plans by November 2022.

Based on the pace that EPA has established in working with certifying authorities on final plan revisions and ultimately approving certification plans since the promulgation of the IFR

extension date, EPA estimates that a certification plan approval can take approximately a year or more after the certifying authority has received EPA's feedback and responded to those comments accordingly. This is largely dependent on when comments were returned to the certifying authority, the quantity and complexity of the feedback EPA provided to the certifying authority, and whether there are any other legislative or administrative processes and considerations within the jurisdiction that must be addressed before resubmission to EPA for approval. The certifying authorities who received EPA comments after October 2021 and those with more complex issues and administrative requirements are the most at risk of missing the IFR deadline of November 2022.

Because a substantial number of certifying authorities require additional time to complete this process, EPA still finds that a regulatory deadline extension is needed, though EPA has reconsidered the length of time it originally proposed. Based on the concerns expressed by farmworker advocacy organizations regarding delayed benefits and the countervailing concerns expressed by the certifying authorities about their ability to respond to EPA comments and to conclude the plan approval process before the IFR deadline, EPA believes that a one-year extension instead of the proposed two-year extension should provide adequate time to complete the plans that are expected to remain in the review and approval process after November 2022. EPA also discusses this decision in Unit III.B.3. regarding presented options to the Agency as an alternative to the proposal. EPA remains committed to concluding these reviews as soon as possible and keeping the Agency's website updated on its progress as they happen. Based on its progress, EPA anticipates remaining plans will be approved before the new extension date of November 4, 2023.

To maintain transparency in the progress of the certification plan approvals, EPA has established and maintains information on the current status of certification plan approvals on its website (Ref. 2). The status table on this webpage is updated frequently with information as plans are returned back to the certifying authority for additional revision, whether revisions were

resubmitted to the Agency, and when the Agency has approved plans. Additionally, EPA intends to formally provide batch *Federal Register* notices on a quarterly basis identifying the certification plans that have been approved and started the implementation phase.

2. Proposed extension rule violates and is not exempt from the National Environmental Policy Act (NEPA).

a. Summary of comment. The farmworker advocacy commenters are concerned that EPA violated NEPA (42 U.S.C. 4321 *et seq.*) by failing to consider the significant environmental and health impacts of, and alternatives to the Proposed Rule. They argue that extending the existing plans' expiration date by another two years constitutes a major federal action that has foreseeable environmental and public health consequences and thus required the Agency to comply with NEPA. They argue that the proposed rule is a major federal action that does not qualify for a categorical exclusion from NEPA compliance and will have a significantly adverse effect on the environment and public health. They argue that EPA's failure to consider, let alone disclose, these impacts and to take the needed hard look at "the direct, indirect, or cumulative" impacts of its proposed action is in direct violation of NEPA's purpose to ensure both the agency and public are aware of the potentially adverse effects of the agency action.

Moreover, the commenters argue that the two-year delay in implementing the 2017 CPA Rule constitutes official policy in that it will substantially alter EPA's initial action to ensure that the much-needed 2017 CPA Rule is implemented in a timely manner to provide needed protections for the use of the most dangerous pesticides. They state that EPA's own regulations acknowledges that RUPs cause unreasonable adverse effects on the environment even when applied in accordance with the currently prescribed uses, and that EPA found adoption of the 2017 CPA Rule necessary to ensure that RUPs do not cause unreasonable adverse effects to applicators, workers, the public, or the environment. The commenter also cites the previous Administration's attempt to delay the 2017 CPA Rule several times, which was stopped in court (Ref. 6). The commenters state that EPA cannot now propose such a lengthy delay absent

considering the on-the-ground, adverse impacts to the environment and human health from allowing RUPs to be applied absent the protections guaranteed by the 2017 CPA Rule.

For these reasons, the commenter argues that EPA needed to take the requisite hard look at the foreseeable impacts of delaying this rule another two full years, and likewise to consider a reasonable range of alternatives. The commenter states that EPA did not even reference NEPA, let alone explain how, if at all, the two-year delay of the protections guaranteed by the 2017 CPA Rule, does not require NEPA analysis. Numerous cases, however, have held that when proposed regulations have foreseeable environmental consequences, the agency must complete the NEPA process by preparing an Environmental Assessment or EIS.

The commenter states that EPA needs to satisfy the dual requirements of NEPA to inform agency decision-makers of the environmental effects of proposed major federal actions and to ensure that relevant information is made available to the public. Delaying the 2017 CPA Rule's implementation by two years with no analysis of impacts or alternatives violates NEPA.

b. EPA response. While EPA thanks the commenter for their feedback, years of jurisprudence demonstrates that EPA actions under FIFRA are not subject to NEPA requirements under the NEPA Functional Equivalence Exemption. The Functional Equivalence Exemption first arose in *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973) ("*Portland Cement*") which involved the promulgation of new source performance standards under section 111 of the Clean Air Act (CAA). Plaintiffs challenged the Agency's decision to promulgate the standards without preparing an environmental impact statement (EIS).

The *Portland Cement* court considered several arguments for why NEPA should not apply in this case and decided against granting EPA a broad exemption from NEPA compliance. *Id.* at 385. In holding that CAA section 111, properly construed, was functionally equivalent to a NEPA environmental impact statement, the court considered these factors: 1) CAA section 111 required that the Administrator accompany a proposed standard with a statement of reasons; 2) Said statement set forth the environmental considerations, pro and con which have been taken

into account as required by the CAA; 3) The proposed rule provided notice and an opportunity for public comment; and 4) There was an opportunity for judicial review. *Id.* at 384-386. The court acknowledged that the rulemaking process provided a “workable balance” between some of the advantages and disadvantages of full application of NEPA. *Id.* at 386. The court was clear when it stated that “NEPA must be accorded full vitality as to non-environmental agencies.” *Id.* at 387.

The NEPA Functional Equivalence Test was first applied to a FIFRA action in *Env'tl. Defense Fund, Inc. v. EPA*, 489 F.2d 1247 (D.C. Cir. 1973). In this case, several parties petitioned the Court for review of EPA’s FIFRA order cancelling almost all registrations for use of DDT, in part on the ground that the order did not comply with NEPA requirements. On the NEPA claim, the court concluded that “where an agency is engaged primarily in an examination of environmental questions, where substantive and procedural standards ensure full and adequate consideration of environmental issues, then formal compliance with NEPA is not necessary, but functional compliance is sufficient.” *EDF* at 1257.

The court found that the rationale developed in *Portland Cement* applied in this case and that “an exemption from the strict letter of the NEPA requirements” was appropriate. *EDF* at 1256. The court considered that FIFRA requires that pesticides be deregistered if they will be injurious to man and his environment and that this standard placed “great emphasis on the quality of man’s environment.” *Id.* Further, the court found that FIFRA’s procedural standards provided the opportunity for thorough consideration of the environmental issues and provided for judicial review. *Id.* In this case, EPA held hearings, solicited public comment and considered a wide scope of environmental aspects. *Id.* The court found that the functional equivalent of a NEPA investigation was provided because “all of the five core NEPA issues were carefully considered: the environmental impact of the action, possible adverse environmental effects, possible alternatives, the relationship between long-and short-term uses and goals, and any irreversible commitments of resources—all received attention during the hearings and decision-

making process.” *Id.*

In *State of Wyo. v. Hathaway*, 525 F.2d 66 (10th Cir. 1975) (“Hathaway”), another FIFRA case involving suspending the registration of certain pesticides without preparation of an EIS, the Tenth Circuit Court of Appeals based the NEPA exemption on broader grounds than those in *Portland Cement*. “At the time that NEPA was passed the EPA had not been organized. Furthermore, the substance of NEPA is such as to itself exempt EPA from the requirement of filing an impact statement. Its object is to develop in the other departments of the government a consciousness of environmental consequences. The impact statement is merely an implement devised by Congress to require government agencies to think about and weigh environmental factors before acting. Considered in this light, an organization like EPA whose regulatory activities are necessarily concerned with environmental consequences need not stop in the middle of its proceedings in order to issue a separate and distinct impact statement just to be issuing it. To so require would decrease environmental protection activity rather than increase it. If EPA fails to give ample environmental consideration to its orders, its failure in this regard can be corrected when the order is judicially reviewed.” *Hathaway* at 71-72.

Finally, in *Merrell v. Thomas*, 807 F.2d 776 (9th Cir. 1986) (“Merrell”), the only legal issue was whether EPA was required to comply with NEPA before it registered seven herbicides under FIFRA. The Ninth Circuit affirmed the district court decision that EPA did not need to comply with NEPA. *Merrell* at 776. It came to that conclusion after examining FIFRA's registration procedure, its registration standard, and the applicable review procedures. *Id.* The Ninth Circuit focused its analysis on the differences, rather than the similarities, of FIFRA and NEPA in reaching its decision.

The Ninth Circuit looked at the fact that EPA did not revise its regulations to require NEPA compliance and that Congress amended FIFRA several times in the 1970s and 1980s by adding environmental provisions and limited public participation procedures rather than mandating that EPA comply with NEPA. *Id.* at 778-780. The Ninth Circuit recognized that the

FIFRA amendments reflected a compromise between environmentalists, farmers and manufacturers and that “(t)o apply NEPA to FIFRA's registration process would sabotage the delicate machinery that Congress designed to register new pesticides.” *Id.* at 779.

Here, it is clear the NEPA Functional Equivalence Doctrine exempts EPA’s extension of the deadline for the expiration of current certification and training plans from NEPA compliance. Applying the Functional Equivalence Test factors: 1) The authority for the current extension of the deadline comes from FIFRA sections 6(d), 11 and 25, each of which set certain standards and procedural requirements for promulgation of actions; 2) Both the proposed and current final rule extending the deadline have taken into account environmental considerations, such as a reduction in incidents causing harm to the environment, costs and benefits, and alternative options; 3) The proposal accompanying this final rule provided an opportunity for public notice and comment and both the proposal and this final rule involve consultation with USDA as well as SAP; and finally 4) Upon finalization of this rule, there will be opportunity for judicial review. Moreover, the *Hathaway* and *Merrell* cases further demonstrate that EPA’s extension of the deadline for expiration of current plans should not be subject to NEPA requirements.

In *Merrell*, the Ninth Circuit recognized Congress amended FIFRA several times in the 1970s and 1980s by adding environmental provisions and limited public participation procedures rather than mandating that EPA comply with NEPA, further demonstrating Congressional intent that EPA need not comply with NEPA in FIFRA registration actions. FIFRA section 25, which mandates the authority of the Administrator and sets requirements for rulemaking under FIFRA, was also amended several times since the establishment of NEPA, most recently in 1996. The fact that Congress chose not to amend Section 25 of FIFRA to include compliance with NEPA further illustrates Congress’s intent that EPA need not comply with NEPA in promulgating regulations under FIFRA. Finally, in *Hathaway*, the Tenth Circuit found that the substance of NEPA is such as to itself exempt EPA from the requirement of filing an impact statement and that an organization like EPA whose regulatory activities are necessarily concerned with

environmental consequences need not stop in the middle of its proceedings in order to issue a separate and distinct impact statement just to be issuing it. For these reasons, EPA's current rule extending the expiration deadline of current certification and training plans is exempt from compliance with NEPA.

3. Alternatives to a two-year extension to the deadline.

a. Summary of comment. The comments from former regulators stated that it was unwise and unnecessary to extend the existing certification plans for all certifying entities for two additional years. In their view, they felt that nearly six years should ordinarily be more than sufficient to complete the revision and approval process, but they recognized the extraordinary pressures that the COVID-19 pandemic has caused and understood that some further time might be needed for some certifying entities to finish their work. However, the commenter was not convinced that two years was necessary to complete this work, particularly considering EPA's assessment in the NPRM that a substantial number of plans were expected to be approved by November 4, 2022. A major concern expressed was related to whether such an extension would reduce the sense of urgency to complete revisions and approvals if extended up to two years, as well whether it would reduce a sense of urgency to implement those changes. Instead of a two-year extension, the commenter offered several alternatives to consider.

i. Conditional extensions: The commenter recommended that EPA issue a final rule that gives itself the authority to grant legitimately needed extensions on a case-by-case basis. Under such authority, the Agency could carefully examine the status of its review of each certifying entity's submission and extend the expiration date of the entity's existing certification plan only for as long as necessary to allow submission and approval of a revised plan that meets the new requirements of EPA's 2017 CPA Rule amendments to 40 CFR part 171.

In the comment, they noted that neither the 2017 CPA Rule, the 2021 IFR, nor the 2022 NPRM contained any provision setting a deadline for implementation of new elements of the revised plans, and that according to EPA, a revised plan must set out the entity's proposed

implementation schedule. The commenter understood that, once EPA approves a revised plan, a certifying entity will be bound by the implementation schedule in its newly approved certification plan to put the required changes into practice, and that, as those changes are made, they will supersede the existing certification plan.

The commenter recommended that any final extension rule should require a certifying authority to implement new elements of its certification plan as soon as possible, and in many cases that would be before EPA approves the full plan. Once the Agency has determined that a particular part of an entity's revised plan is acceptable, the commenter felt that there was no reason why the entity could not begin immediately to make it operational. The commenter also recommended that EPA require the entity to begin implementation of an element as soon as it is accepted by the agency. For example, the commenter believed that in most, if not all states, a certifying entity could quickly start to enhance the security around the administration of certification exams. Entities can also require photo-identification from test takers, and they can take other steps to minimize cheating. The quicker new elements become effective, the sooner the expected benefits of the 2017 CPA Rule will be realized.

ii. Incentivize certifying entities to complete the CPA plan approval process. Under the current and proposed rules, certifying entities do not have strong incentives to complete the certification plan approval process. The commenter suggested that the prospect that EPA will not approve a plan and will instead administer a federally run certification plan clearly provides some incentive, and that certifying entities and the users of RUPs would probably prefer not to have to deal with an EPA program. The commenter felt that the EPA program would almost certainly be less convenient in many ways, but, if EPA is willing to extend existing certification plans as long as the approval process continues, certifying entities may feel little worry about the threat of an EPA takeover of their CPA programs.

The commenter also stated that EPA could issue a final rule that gives certifying entities more compelling reasons to try to secure EPA approval of their plans as quickly as possible. For

example, the commenter suggested that EPA's final rule could give itself authority to withhold or reduce FIFRA programmatic and enforcement grants from an entity if, in the agency's view, the entity is not making reasonable progress toward completion of the certification plan approval process. The commenter suggested that EPA could also consider other ways it could incentivize entities to move expeditiously to finish the approval process.

iii. Promulgate a rule that directly implements requirements of the 2017 CPA Rule. The commenter states that the 2017 CPA Rule establishes a series of very important requirements that a certifying entity must meet if it wishes to administer a certification plan, and that many of these requirements would directly affect the users of RUPs who wish to become certified. For example, EPA's 2017 CPA Rule prohibits an entity from issuing an applicator certification to anyone younger than 18 years old and requires that the entity prohibit anyone younger than 18 from using a RUP under the direct supervision of a certified applicator. In addition, the 2017 CPA Rule prohibits the application of a RUP by an uncertified individual under the direct supervision of a certified applicator unless the individual has received certain basic training. The 2017 CPA Rule also requires an entity to establish a renewal period of no longer than five years for applicator certifications. These requirements, as the commenter notes, are not self-executing. To apply to RUP users within its jurisdiction, a certifying authority must codify the requirements in statutes or regulations.

To ensure that CPA protections become realized, the commenter recommended an option that EPA promulgate a rule that makes them binding on RUP users, without depending on the actions of a certifying authority. The commenter suggested that EPA could use its authority under FIFRA section 3(d)(1)(C)(ii) to issue rules establishing additional "other regulatory restrictions" on pesticides classified for use only by certified applicators. The commenter stated that such a rule, at a minimum, should prohibit the use of a RUP product by any person who is younger than 18 and prohibit use by an uncertified individual who has not received the basic training specified in the 2017 CPA Rule. The commenter also suggested that EPA could consider

a rule which provides that no applicator certification shall be valid for longer than five years; in effect, such a provision would mandate the periodic renewal of applicator certifications.

iv. Blanket extension of up to one-year. The commenter recognized that EPA may determine that recommendations in Unit III.B.3.a.i. through iii. should not be implemented in the final rule because the recommendations could arguably be deemed to not be a “logical outgrowth” of the NPRM. If the Agency were to make such a determination, the commenter encouraged the Agency to consider incorporating these recommendations into any future rulemaking that might address further extension of existing certification plans while EPA reviews continue. For example, if the Agency decides to grant a shorter, across-the-board extension than it had proposed, they acknowledge that there may still be a legitimate need for some additional case-by-case extensions. If EPA were to decide to conduct another rulemaking to grant such extensions, the commenter felt the recommendations that were not accepted could be addressed then.

Instead, the commenter suggested that if EPA decides not to finalize a rule to allow case-by-case extension decisions, then the Agency should only extend the deadline for existing certification plans as long as needed to review and approve a majority of certification plans. The commenter recommended that the extension issued by this rulemaking should be no longer than a year (*i.e.*, to no later than November 4, 2023). The shorter duration of the extension, they felt, would create a greater sense of urgency for certifying entities to complete their work to prepare acceptable plans.

The commenter’s primary reason for limiting an extension to one year is to create a sense of urgency for completing the process and to allow EPA, only if necessary, to formulate and promulgate a second rule, which would take a more thoughtful and nuanced approach than the current rulemaking to granting additional extensions. The commenter suggested that if it appears that, at the end of any extension issued pursuant to this rulemaking, there are likely to be entities that still legitimately need additional time to complete the review and approval process, the

commenter stated EPA could promulgate another rule granting additional extensions. But, rather than an automatic, across-the-board extension for everyone, the commenter recommended that such additional rules should provide the Agency with discretion to grant an entity an additional extension only for as long as it appears reasonably necessary. Thus, the commenter recommended that additional extensions should be granted on a case-by-case basis to entities, understanding that the length of time may vary from entity to entity. The commenter felt that not only could the duration of these extensions be tailored to each certifying authority's situation; but also, the approval of an extension could require, while the review continues, the certifying authority to implement all accepted plan elements as quickly as possible (rather than wait for all outstanding issues to be resolved). Moreover, the commenter felt that such a rule could give EPA the option to reduce the FIFRA enforcement and FIFRA programmatic grants awarded to an entity until EPA approves the entity's plan.

b. EPA response. EPA appreciates the commenter's feedback and recommendations for additional options other than EPA's proposal of extending the deadline up to but not longer than two years, to November 2024. At the time the NPRM published, EPA did not have enough information to determine an appropriate length of time for an additional extension, and as a result, proposed up to but not longer than two years. EPA's intent for the proposal was primarily to solicit information on an appropriate extension length while signaling EPA's desire to not go beyond two years in any extension it would consider. Due to the progress that has been made by EPA in concluding its reviews and approving revised certification plans and the feedback provided in public comments, EPA agrees with the commenter that it is now unnecessary to extend the deadline up to November 2024, though the Agency has determined that an extension is still needed. As of July 8, 2022, EPA has approved 7 certification plans and estimates that approximately half of all certification plans will be approved prior to November 4, 2022 (see Ref. 2 for current status information). While considerable progress has been made in the approval process, EPA estimates that approximately 30 certification plans are the most at risk of

not meeting the deadline of November 4, 2022. Considering all of the options presented in the recommendations to EPA and the substantial number of plan approvals that remain, the Agency has determined that the best approach moving forward is to extend the deadline one year to November 4, 2023.

EPA believes that based on the current status of plan approvals and feedback received from stakeholders, the best option for moving forward is an additional one-year extension, rather than the alternative options suggested by the commenters, including conditional approvals, incentivization, or direct implementation. However, since EPA expects to complete its approvals for approximately half of the plans by November 2022, EPA agrees that the proposed maximum extension of two years is no longer necessary. Based on the pace that EPA has established in working with certifying authorities on final plan revisions and ultimately approving certification plans since the promulgation of the IFR extension date, EPA estimates that a certification plan approval can take approximately a year after the certifying authority has received EPA's feedback and revised their plan accordingly. The Agency is confident that it can approve all remaining plans before November 4, 2023. However, the Agency notes that if the additional one-year extension turns out not to be sufficient to approve all remaining plans, the Agency may, at a later date, consider additional rulemaking and other options like conditional approval of plans. EPA emphasizes its confidence that all plans will be approved by November 2023 and that the Agency is not considering alternative options at this time.

IV. New Deadline for Certification Plan Approvals

Based on the public comments and EPA's assessment of the certification plan approval process to date, EPA is extending the deadline provided in 40 CFR 171.5(c) for amended certification plans to be approved without interruption of the existing certification plans for one year, from November 4, 2022, to November 4, 2023. This additional time is necessary to assure that the remaining certifying authorities who received their plans late in the process have enough time to present approvable certification plans, and for EPA to continue working closely with

those state, territory, and tribal agencies on necessary modifications, and ultimately approve their certification plans. EPA anticipates that the remaining certification plans pending approval will be completed within six to nine months after November 2022, but the Agency has opted to extend the deadline by one full year in the event that unforeseen circumstances or any internal legislative or administrative issues need additional time to be resolved. EPA has been and will continue to issue notices of certification plan approvals periodically to the public in batched notices in the *Federal Register* and on EPA's website (Ref. 2) as they are approved.

Since approximately half of the certification plans are anticipated to be approved by November 2022, the Agency does not expect at this time to propose or issue an additional blanket extension of this expiration deadline for existing plans beyond November 4, 2023. The extension in this final rule should provide the necessary time for all remaining certifying authorities to respond to EPA comments and for EPA to review and approve those changes. In the unlikely event that a certification plan is at risk of not meeting the new deadline, EPA does plan to further assess all potential options, including those presented in Unit III.B.3., to determine the best approach moving forward.

V. 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. Pesticides; Certification of Pesticide Applicators; Extension to Expiration Date of Certification Plans; Interim Final Rule. *Federal Register*. 86 FR 71831, December 20, 2021 (FRL 9134-02-OCSPP).

2. EPA. "Certification Standards of Pesticide Applicators." Website provides latest status

of Certified Applicator Plans. <https://www.epa.gov/pesticide-worker-safety/certification-standards-pesticide-applicators>.

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

4. EPA. Economic Analysis of the Final Amendments to 40 CFR part 171: Certification of Pesticide Applicators [RIN 2070-AJ20]. December 6, 2016. Docket ID No. EPA-HQ-OPP-2011-0183-0807.

5. EPA. Pesticides; Certification of Pesticide Applicators; Further Extension to Expiration Date of Certification Plans; Proposed Rule. *Federal Register*. 87 FR 6821, February 7, 2022 (FRL-9134.1-01-OCSP).

6. *Pineros y Campesinos Unidos del Noroeste, et al., v. Pruitt, et al.*, Case No. 17-CV-03434 (N.D. Cal. filed June 4, 2017); 293 F. Supp. 3d 1062 (N.D. Cal. 2018).

VI. FIFRA Review Requirements

Under FIFRA section 25, EPA has submitted a draft of the final rule to the Secretary of the Department of Agriculture (USDA), the FIFRA Scientific Advisory Panel (SAP), and the appropriate Congressional Committees. Since there were no science issues warranting review, the FIFRA SAP waived review of the final rule on July 25, 2022. USDA completed its review without comment on August 5, 2022.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993) and was therefore not submitted to the Office of Management and

Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection activities or burden subject to OMB review and approval under the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined in 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulations and associated burden under OMB Control Numbers 2070-0029 (EPA ICR No. 0155) and 2070-0196 (EPA ICR No. 2499). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the *Federal Register*, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern is any significant adverse economic impact on small entities, and the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities, because the rule relieves regulatory burden. The change to the expiration date in this rule will reduce potential impacts on all entities subject to the CPA regulations if their certifying authorities' plans were not approved in time, so there are no significant impacts to any small entities by issuing this rule. EPA has therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes

no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not impose substantial direct compliance costs on tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045, because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use

This is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations

In accordance with Executive Order 12898 (59 FR 7629, February 16, 1994), EPA finds that this action will not result in disproportionately high and adverse human health, environmental, climate-related, or other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts during this administrative action to extend the expiration date. This extension will provide EPA and any remaining certifying authorities pending their plan approvals an opportunity to finalize the revised certification plans, ensuring that the increased protections identified in the 2017 CPA Rule are realized for all affected populations. EPA has been and will continue to work expeditiously with certification authorities to review and approve plans. This engagement will ensure the modified plans are appropriately protective of certified pesticide applicators and those under their direct supervision and will ensure that certified applicators are trained to prevent bystander and worker exposures.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 171

Environmental protection, Applicator competency, Agricultural worker safety, Certified applicator, Pesticide safety training, Pesticide worker safety, Pesticides and pests, Restricted use pesticides.

Dated: August 12, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons set forth in the preamble, EPA amends 40 CFR part 171 as follows:

PART 171—CERTIFICATION OF PESTICIDE APPLICATORS

1. The authority citation for part 171 is amended to read as follows:

Authority: 7 U.S.C. 136-136y.

2. Amend § 171.5 by revising paragraph (c) to read as follows:

§ 171.5 Effective date.

* * * * *

(c) *Extension of an existing plan during EPA review of proposed revisions.* If by March 4, 2020, a certifying authority has submitted to EPA a proposed modification of its certification plan pursuant to subpart D of this part, its certification plan approved by EPA before March 6, 2017 will remain in effect until EPA has approved or rejected the modified plan pursuant to § 171.309(a)(4) or November 4, 2023, whichever is earlier, except as provided in paragraph (d) of this section and § 171.309(b).

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