

Certification Plan Revisions - Questions & Answers

DRAFT 5.11.18

This document is intended for State, Tribal and Federal agency certifying authorities, as well as EPA HQs and Regional staff involved in applicator certification program implementation, to share EPA's responses to the compiled list of questions submitted to EPA's Certification and Worker Protection Branch concerning issues related to the revision of certification plans and programs. The Qs & As are organized below by the following topics:

- Timelines in the Rule and Required Deliverables
- Plan Content/Requirements
- Required Legal Authorities for Plan
- Plan Submission and Review Process
- Certification Standards
- Noncertified Applicator Competency and Supervision
- General Rule Provisions and Program Implementation Issues

1. Timelines in the Rule and Required Deliverables.

Q1A: *Do certifying authorities have until March 2020 to give us a proposed plan for modification of their certification plan describing what changes they plan to make, and the timeframe for the changes?*

Q1B: *Exactly what is needed from the certifying authorities by March 4, 2020? Please provide some templates and/or examples. (R1 States)*

Q1C: *Can a certifying authority submit a revised plan earlier than March 4, 2020? (R1 States)*

Q1D: *Is the March 4, 2020 date applicable for applicators in Indian country? (R1 States)*

Q1E: *EPA is developing a federal plan for tribes applying pesticides in Indian Country. When is that expected to be completed and could it be considered a template and/or example for the States? (R1 States)*

Q1F: *The timing of the minimum age requirement reconsideration by EPA is a problem. The State may need to go through rulemaking for all changes except minimum age, and have separate rulemaking later for only minimum age. Can States go final with all changes by March 4, 2020, except minimum age? (R2 NY where age requirement for technicians is 17, for apprentices is 16)*

2. Plan Content/Requirements.

Q2A: *The rule requires a written Statement by the Governor of the State designating a State lead agency (SLA) responsible for administering the State certification plan. If the copy of the Governor's*

“designation letter” contained in the current EPA-approved plan is still valid (i.e., the SLA designated in the letter is still the SLA of record), can the State just submit the same copy of the letter to meet the requirements of the rule? (R2 NY/NJ)

Q2B: *The rule requires a written opinion from the State attorney general (AG) or from the legal counsel of the SLA that States that the lead agency and other cooperating agencies have the legal authority necessary to carry out the certification plan. If there are changes to the State’s pesticide laws or regulations to meet the rule’s requirements does the SLA need to submit a new written opinion or can it use the current one on file? (R2 NY/NJ)*

Q2C: *What should the opinion from the State attorney general or from the legal counsel of the SLA look like? Are there examples that can be provided? (R2 NY/NJ)*

Q2D: *The rule says that if more than one agency or organization will be responsible for performing functions under the certification plan, the plan must identify all such agencies and organizations and list the functions to be performed by each, and describe how these functions will be coordinated by the lead agency to ensure consistency of the administration of the certification plan. Is there a strategy or model work plan that outlines how the lead agency should/will support PSEPs and/or other cooperating agencies in the plan and vice versa? (R1 States)*

Q2E: *Several new categories are required by the rule for certain types of applications/uses (e.g., soil and non-soil fumigation, aerial, predator control). If a State chooses not to implement a certification category for these uses because of low need would that State still be able to accept the certifications of applicators from other States with the category? If so would this allowance have to be specified in the State plan? (R1 States)*

3. Required Legal Authorities for Plan.

Q3A: *Are there certain State plan requirements in 170.303 that can only be met by having or establishing State statutory or regulatory requirements that demonstrate compliance with the requirement? (R2 NY/NJ)*

Q3B: *Do all of the State’s certification plan elements that are required by 171.303 have to be established in State laws and regulations, or can some of the requirements be met by the State having a written policy that documents the State’s program is complying with the Part 171 requirements? (Example: Can private applicator competency standards be established by policy?) (R2 NY/NJ)*

Q3C: *Is there a guidance document on how to add criminal authority? (R2 NY/NJ)*

4. Plan Submission and Review Process.

Q4A: *What will be the role of Certification Plan and Reporting Database (CPARD) be for the future reporting for State certification plans and the submission of revised certification plans (given that CPARD has not been made operational yet since being transferred to EPA)? (R1 States)*

Q4B: *Who will sign and send the final letters of approval to the States regarding approval/decision on their State plans? (R1 States)*

Q4C: *Will EPA review and approve Certification plans and /or regulation changes if States make partial plan submissions to EPA? (R2 NY/NJ)*

Q4D: *If the States submit draft documents containing interim plan revisions or information about plans for proposed regulatory changes to EPA via email, could the information be released under FOIA? Is there a way EPA can review it without the State worrying that the draft text can be made public? (It is a concern of some SLA's legal counsel that EPA would need to review draft deliberative regulatory documents that are not public under state processes and EPA could potentially have to release them under FOIA if they are shared with EPA for interim reviews.) (R2 NY/NJ)*

Q4E: *Will EPA Regions have to complete their reviews of revised plans and make a determination by March 4, 2022 too?*

Q4F: *Can EPA make “contingent approvals” on certification plans so the existing approved plan remains in effect until all changes are made and the modified plan can be approved?*

Q4G: *How many years can an existing approved plan be allowed to remain in effect under an EPA approval of a revised plan that is “contingent” on the certifying authority completing certain tasks to bring their plan into full compliance with the rule and terms of the approval letter?*

Q4H: *Does EPA withhold approval of a revised certification plan until the certifying authority has made all the changes EPA requested? Does the certifying authority notify EPA that all the plan changes are complete and EPA then issues final approval, and that is the effective date of the approved modified plan?*

Q4I: *Describe how EPA will make its “equivalency determinations” for situations where the certifying authority’s statutory or regulatory requirements for certain standards or regulatory authorities are not exactly like those contained in the Part 171 rule (i.e., how will EPA make the determination whether the plan’s requirements will meet or exceed EPA’s requirements?).*

5. Certification and Recertification Standards.

Q5A: *Does a certifying authority need to have the exact same regulatory text in its rules for its category competency standards as EPA has in Part 171 for the same or similar categories? What about situations where EPA does not have a comparable category or competency standard?*

Q5B: *When do certifying authorities need to ensure that certification exams meet the new exam standards? (R1 MA)*

Q5C: *Will currently certified applicators have to meet new certification and recertification standards under the revised plan (i.e., will they be allowed to be “grandfathered in” when program requirements change)? (R1 MA)*

Q5D: *§171.103(d) states in part, “Examinations... must be based on the standards of competency specified in paragraphs (d)(1) through (15) of this section.” Likewise, §171.105, Standards for certification of private applicators, states in paragraph (a), “Persons seeking certification as private applicators must demonstrate practical knowledge of the principles and practices of pest control...including all of the following” before listing the standards. It appears in both cases that the rule is defining general standards upon which exam should be based rather than listing specific items that must appear on an exam. However, §171.103(c), Core standards for all categories of certified commercial applicators, states “Written examinations for all commercial applicators must address the following areas of competency...” and then lists topics. Our question is whether this section is defining the standards on which core exams are to be based, or is it a listing the topics that must appear in items on a Core exam. Please clarify whether the language in the rule is meant to define standards on which certification exams are based or if it is meant to list specific topics that must appear in items on certification exams. Please clarify which interpretation is correct. (R1 States)*

Q5E: *171.107(b)(2)(iii) says, “A certifying authority must ensure that any continuing education course or event, including an online or other distance education course or event, relied upon for applicator recertification includes a process to verify the applicator’s successful completion of the course or event.” What does EPA require the State to have in place to verify that a person participated in online training or online testing? Currently States put the burden on the sponsor of the online course provider. (R2 NY/NJ and R7 NE)*

Q5F: *Other than written examination/testing, what are other ways States could use to determine private applicator competency that would meet the standards and EPA would find acceptable? (R7 MO)*

6. Noncertified Applicator Competency and Supervision.

Q6A: *Could certifying authorities have a certification plan that permits the annual safety training for noncertified handlers to be handled through online training? (R1 States)*

Q6B: *Are “apprentices” and “technicians” considered “noncertified applicators”? If the State chooses to require apprentices or technicians to take courses and have on the job training, are they also required to have annual training as well under the revised plan? If the State’s plan requires apprentices to take and pass a core exam every 3 years, would that be sufficient to meet the 171 standards for noncertified applicator competency? Will EPA approve the States’ requirements for noncertified applicators on a case by case basis? (R2 NY/NJ)*

Q6C: §171.201(b)(1)(ii) States that supervisors of non-certified applicators must be certified in the category which is applicable to the supervised application. However, §171.201(d)(2)(i) seems to allow the possibility that a certified applicator can train a non-certified applicator who will apply pesticides outside of the trainer’s certification category. Is this correct? (e.g., a person certified only in structural pest control can train---but not supervise---a non-certified applicator who will be making turf applications) (R1 States)

Q6D: May a State’s certification plan propose qualifying noncertified applicators to apply RUPs under the supervisions of a certified by obtaining CEUs in lieu of being training annually? If so how would that be tracked and recorded? (R1 States)

Q6E: May a State’s certification plan propose qualifying noncertified applicators to apply RUPs under the supervisions of a certified by requiring the noncertified be “licensed” in lieu of being training annually (e.g., if a State requires a Core license)? Does a “licensed” noncertified applicators have to take annual training? (R1 MA)

Q6F: Is the certifying authority required to establish an upper limit to the number of noncertified applicators that can be under the direct supervision of a certified applicator? (R1 States)

Q6G: Will State plans need to require that both commercial and private certified applicators keep and maintain training records for the training of noncertified applicators working under their direct supervision? (R7 MO)

7. General Rule Provisions and Program Implementation Issues

[NOTE: These questions about rule provisions and program implementation or enforcement issues are not directly related to certification plan revision issues per se, so the responses are included here at the end under this topic heading.]

Q7A: What efforts are being made to provide SLAs and PSEP additional funding to implement the program, including funding for developing new tests and training materials (for all categories, not just the new application-specific categories)? (R1 States)

Q7B: Is there a determined timetable for the current CPARD to be fully functioning? (i.e., When will CPARD be fixed?) (R1 States)

Q7C: States recommend development of a video that is suitable and content relevant to train non-certified, non-agricultural pesticide applicators. Will EPA provide such a video resource? (R1 States)

Q7D: *The rule assigns supervising certified applicators responsibility for equipment maintenance and operation. What type of documentation is required? Is this supposed to be another component of record keeping? (R1 States)*

Q7E: *Who is responsible for keeping records on the training of non-certified applicators? (R1 States)*

Q7F: *Will States be required to track and report in CPARD the number of noncertified applicators that are trained annually? (R7 MO)*

Q7G: *The rule at 171.201(b)(3)(i) requires the certified applicator to ensure that the noncertified applicator has access to the applicable product labeling at all times during its use. Does EPA define what “access to the applicable product labeling” means? Does it have to be a paper copy or can it be on an electronic device, such as a tablet? (R2 NY/NJ)*

Q7H: *Each State has its own political climate. SLAs and PSEPs will need resources (\$\$) to implement the program and all States will need to effectively communicate the changes. Note that outreach articles and news releases could be used by States and extension in newsletters, regional publications and other methods to reach the regulated community. Outreach support could also be used by trade groups, grower association and other stakeholders to amplify the message. Will OPP provide articles, news releases and other outreach support to help the States? (R1 States)*

Q7I: *EPA HQ has stated they want to know about significant incidents like the recent rash of Dicamba problems or methyl bromide drift, etc. Is there already a place in CPARD to report this? Has EPA issued guidance on reporting expectations? Is this the kind of information EPA is seeking for “Program Reporting and Accountability: A summary of enforcement activities related to the use of RUP’s.”? (R2 NY/NJ)*

Q7J: *If applicators in our State take a core exam first, then a category exam, do we need to review the content (compared to federal competency standards) of all exams or core exams only? (Example: State’s commercial applicators must have core license for 2 years before obtaining commercial applicator license.) (R1 MA)*

Q7K: *Reiterate the category requirements for the aerial, fumigation and predator control categories (i.e., must applicators also be certified in the “use category” associated with the specialized application they are making? (e.g., if an aerial applicator is applying to crops must he also be certified in the Agricultural Plant category or is the aerial category certification sufficient?)) Do you anticipate any exceptions? (R1 States)*