

**Supporting Statement for an Information Collection Request (ICR)  
Under the Paperwork Reduction Act (PRA)**

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**EXECUTIVE SUMMARY**

***Identification of the Information Collection – Title and Numbers***

**Title:** Pesticides; Certification of Pesticide Applicators; Final Rule [RIN 2070-AJ20]

**EPA ICR No.:** 2499.03

**OMB Control No.:** 2070-0196

**Docket ID No.:** EPA-HQ-OPP-2021-0287

*Please note that the activities and burdens addressed in this ICR, apart from the use of the new ICR format and other minor adjustments, is the same as that which is currently approved. In a separate and parallel effort, the information collection activities in the existing ICR are being incorporated into the renewal ICR entitled “Certification of Pesticide Applicators” (EPA ICR No.0155.14; OMB Control No. 2070-0029). The submission of this renewal ICR without substantive changes is intended to serve as a placeholder to ensure the continuity of the existing approval while the other renewal is in process. Once that ICR is approved, this ICR will be discontinued.*

***Abstract***

This Information Collection Request (ICR) amendment covers the revisions from a final rule to the “Certification of Pesticide Applicators” (Certification rule) at 40 Code of Federal Regulations (CFR) Part 171, which regulates the certification of applicators of restricted use pesticides (RUPs)<sup>1</sup>. This ICR estimates the incremental burden of revised requirements applicable under the Paperwork Reduction Act (PRA), that are not already included in the ICR “Certification of Pesticide Applicators” (Attachment A) covering 40 CFR Part 171 prior to the new final rule. That ICR, which this ICR amends, was currently-approved by the Office of Management and Budget (OMB) at the time this ICR was submitted to OMB with the final rule, and is termed the “existing ICR” in this document.

The existing regulation (prior to the new final rule) has provisions for states, the District of Columbia (D.C.), tribes, territories, and federal agencies that wish to certify applicators to use RUPs, to submit certification plans to the U.S. Environmental Protection Agency (EPA, or the Agency) for review and approval, and requirements to report specific information related to applicator certification activities annually. The

<sup>1</sup> Issued in the ***Federal Register*** on January 4, 2017 (82 FR 952) (FRL-9956-70) and identified in the Unified Semi-annual Regulatory Agenda under RIN 2070-AJ20.

regulation has standards of competency for persons who are certified to apply RUPs, as well as requirements related to noncertified applicators who apply RUPs under the direct supervision of certified applicators. In addition, it already requires pesticide retail dealers to maintain records of RUP sales in areas where the EPA administers an applicator certification program.

The final rule is intended to improve the competency of certified applicators of RUPs and noncertified applicators who apply RUPs under the direct supervision of certified applicators. The final rule includes new and revised standards for certification for commercial and private applicators, provisions for recertification of applicators, and training for noncertified applicators applying RUPs under the supervision of certified applicators. The revisions also include changes to improve the clarity and organization of the rule and overall program operation. The proposed changes to the regulation are intended to ensure that all persons who use RUPs – i.e., private applicators, commercial applicators, and noncertified applicators using RUPs under the direct supervision of certified applicators – are competent to use RUPs in a manner that will not result in unreasonable adverse effects to themselves, others, or the environment.

This amendment ICR estimates the burden and costs of the final rule changes related to information collection and includes: training for noncertified applicators applying RUPs under the direct supervision of certified applicators, recordkeeping of the noncertified applicator training, recordkeeping of RUP sales by pesticide dealerships under certification programs not administered by the EPA, and burden to states, D.C., territories, tribes, and federal agencies to revise certification plans as needed to comply with the revised requirements.

The following sections provide a general overview of the paperwork requirements in the final rule; burden and cost estimates are found in question 12.

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## **SUPPORTING STATEMENT**

### ***1. Explain the circumstances that make the collection of information necessary.***

The EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This responsibility includes protecting applicators, the public, and the environment from exposure to pesticides. FIFRA section 3(d) (Attachment B) sets out requirements for the classification of pesticides, including for restricted use. FIFRA section 11 (Attachment C) addresses certification of applicators. The existing regulation at 40 CFR Part 171, “Certification of Pesticide Applicators,” (Attachment D) establishes the regulatory requirements for applicators of RUPs. RUPs are pesticides that the EPA classifies as restricted use because they may pose unreasonable adverse effects to human health or the environment without additional regulatory restrictions. To mitigate the risks of unreasonable adverse effects,

RUPs must only be applied by applicators who have demonstrated a sufficient level of competency, as outlined in the regulations at 40 CFR part 171.

In accordance with FIFRA Section 25, the EPA issued a final rule to revise 40 CFR 171, to improve these protections.

RUP applicators, including certified applicators and noncertified applicators using RUPs under the direct supervision of certified applicators, may be exposed to a wide range of pesticides and pesticide residues, with different toxicities and risks, as part of their occupation. Such exposure can pose significant long- and short-term health risks. RUPs, in particular, pose risks of unreasonable adverse effects to the health of the applicators, bystanders, and the public, as well as to the environment, if not applied properly. There is strong general evidence that such risks can occur and that they can be reduced; the activities subject to this ICR are designed to help reduce these risks by ensuring the competency of applicators applying RUPs, thereby reducing exposure. Overall, the weight of evidence suggests that these revised paperwork activities included in the final rule should result in reduced incidents of negative effects from RUP exposure to applicators, the public, and the environment.

The final rule requires specific training for noncertified applicators on proper application of RUPs and how to protect themselves, their families, and the environment from RUP exposure. Without the required training, affected noncertified applicators may be unaware of the risks of pesticide exposure or how to protect themselves and others from RUP exposure. The final rule also requires that a commercial applicator supervising a noncertified applicator maintains records of the training provided. The training and recordkeeping are intended to improve protections for noncertified applicators, the public, and the environment.

The regulations are enforced by state agencies, D.C., tribes, and territories. The EPA has received feedback from our regulatory partners indicating difficulty enforcing some requirements, due primarily to a lack of records. Recordkeeping of training and RUP sales, required in the final rule, is designed to improve enforcement capability as a means of fostering compliance, thereby improving protections.

***2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the Agency has made of the information received from the current collection.***

Training of noncertified applicators is necessary to ensure that persons using RUPs under the direct supervision of certified applicators have received the proper instruction and are prepared adequately to use RUPs in a manner that should not cause unreasonable risk to human health or the environment. Records of this training, for applicators under the supervision of commercial applicators, should increase the likelihood of appropriate training occurring, thereby reducing misuse and exposure.

Dealer records of sales of RUPs are necessary to ensure that access to RUPs is limited to certified applicators. Recordkeeping of both training and sale of RUPs enhances the enforceability of these requirements.

State, D.C., tribal, territory, and federal agency certification plans and annually reported data related to applicator certification under these programs are used for several purposes. When a certification plan is created or modified, the EPA approves it when its review concludes that the plan satisfies the requirements for certification and recertification under 40 CFR part 171. When a state receives a request to issue a reciprocal certification based on a certification issued by another state, it may review the certification plan of the issuing state to ensure the standards for certification are sufficiently similar to its own to warrant granting the reciprocal certification. The annually reported data from state certification programs is used in a formula to appropriately distribute federal funding to states under the State and Tribal Assistance Grants program.

***3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.***

This information collection amendment applies to authorized agencies and individuals who are certified applicators or dealers of RUPs. The EPA does not require the submission of records kept by RUP dealers or commercial applicators, but rather requires that they furnish records for inspection and copying upon request. Authorized agencies have an obligation for a one-time submission to the EPA of updated certification plans. Agencies submit revised certification plans for review and approval using an electronic submission and reporting portal (Certification Plan and Reporting Database).

***4. Describe efforts to identify duplication***

The EPA is the only federal agency with the authority to certify applicators of RUPs. However, the United States Department of Agriculture (USDA) also has regulations that impact certified applicators. The records required by USDA under 7 CFR 110, "Recordkeeping on Restricted Use Pesticides by Certified Applicators; Surveys and Reports," are more specific than those required by the EPA under 40 CFR 171.

USDA's regulations require private applicators to maintain records regarding the application of RUPs. FIFRA prohibits the EPA from requiring private applicators to keep records or make reports, so there is no duplication of recordkeeping with regard to private applicators. Only the EPA requires recordkeeping for commercial applicators. The required recordkeeping for training of noncertified applicators only applies to commercial applicators. Consequently, no duplication of requirements exists.

The regulation provides for an exemption from the requirements of training for noncertified applicators using RUPs under the direct supervision of a certified applicator who have a currently valid training qualification as a handler under the Worker Protection Standard found in 40 CFR Part 170. Therefore, no duplication of training is imposed.

***5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.***

Most affected entities (certified applicators, RUP dealers) are small entities. The information collected and the recordkeeping required is the minimum required by regulation and that is necessary to implement a successful certification program. The EPA believes that the records required of certified pesticide applicators and RUP dealers are minimal and would generally be kept by the affected entities for their own use even in the absence of this regulation.

***6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.***

Training for noncertified applicators is required annually under the final rule, as specified in 40 CFR 171. Recordkeeping of the training is only required once per event. Consequently, the possibility for less frequent recordkeeping does not exist under the proposed amendments. Less frequent training would increase risk of unreasonable adverse effects from RUP use.

States, D.C., tribes, territories, and federal agencies that currently have certification plans approved by the EPA (called “authorized agencies” in this ICR, and termed “certifying authorities” in the final rule) will be required to revise these certification plans to incorporate the final rule revisions. Current certification plans include plans from the 50 states, the District of Columbia, American Samoa, Cheyenne River Sioux, Guam, Commonwealth of the Northern Mariana Islands, Oglala Sioux, Republic of Palau, Shoshone-Bannock Three Affiliated Tribes, and U.S. Virgin Islands, as well as the U.S. Department of Defense, the U.S. Department of the Interior, the U.S. Department of Energy, the U.S. Department of Agriculture (USDA) (USDA, APHIS/PPQ, and USDA Forest Service). In addition, the Agency administers two Tribal certification plans (the Navajo Nation Certification Plan and the Federal Certification Plan for Indian Country). This submission is anticipated as a one-time event. As required under the existing regulation, an authorized agency that makes significant changes to its plan, separate and distinct from the changes to comply with the final rule, would be required to submit the revised plan to the EPA for approval.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

This information collection adheres to OMB's guidelines at 5 CFR 1320.5(d).

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside EPA to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.**

Pursuant to 5 CFR 1320.8(d), EPA published a notice in the Federal Register on June 30, 2021 (86 FR 34745; FRL-10022-67), announcing the planned renewal of this information collection activity, soliciting public comment on specific aspects of the ICR and providing a 60-day public comment period. That solicitation included a request for comment on the revised renewal of the base ICR for the certified pesticide applicator program, which was revised to incorporate the information collection activities and burdens associated with this rule-related ICR. EPA did not receive comments on this ICR renewal.

The EPA also consulted 3 stakeholders, specifically asking them for their assessment of the regulatory burden estimates expressed by the Agency in this ICR.

EPA consulted with the following entities and received 1 response:

- **North Carolina Dept. of Agriculture and Consumer Services (Replied)**
- Pennsylvania Dept. of Agriculture and Consumer Services
- Florida Dept of Agriculture and Consumer Services

The stakeholder commented that the overall information of the ICR is accurate apart from the burden in terms of the estimated labor wage rates in relation to most State wages who are doing the reporting for this ICR. The stakeholder also suggested reporting be done every 3 years instead of annually.

The Agency recognizes the comment was consistent with the assumptions in the ICR, except for the wage rate for state workers. OPP uses a fully loaded wage rate, which includes overhead and benefits, so it may seem higher than a cash wage that people are more familiar with. Further, OPP uses a single, national average for state wage rate, which may not represent specific state wage rates.

While the Agency heard the recommendation from the respondent to change the reporting timeline requirements, however annual reports are a requirement in the current rule. Until a change in rulemaking has been conducted, the frequency in reporting will remain the same annually. The burden calculated and estimated by the Agency remains unchanged (**Attachment F**).

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

This question is not applicable to this ICR

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

The activities or records proposed in this information collection do not include any confidential business information (CBI) and will not involve any confidentiality concerns or information.

The Agency does not collect recordkeeping on the third-party training and RUP sales requirements. Further, this activity complies with the provisions of the Privacy Act of 1974 and OMB circular A-108.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No information of a sensitive or private nature is requested in conjunction with these information collection activities, and these information collection activities comply with the provisions of the Privacy Act of 1974 and OMB Circular A-108, as amended, "Responsibilities for the Maintenance of Records about Individuals by Federal Agencies."

**12. Provide estimates of the hour burden of the collection of information.**

A full summary of all estimates of the respondent burden (hour and costs) and calculation is reflected in **Attachment G**. The total number of respondents affected by this ICR is 2,305,613.

**Table 1. Bottom Line Incremental Increase in Annual Burden and Cost to Respondents**

<b>Respondent</b>	<b>Total Burden Hours</b>	<b>Total Cost (\$)</b>
Rule Familiarization (Table 2)**	457,094	\$30,822,280
Revision of State Certification Plans (Table 3a)**	300,136	\$20,546,661

Revision of Other Authorized Agency Certification Plans – Federal Agencies, Territories and Tribes (Table 3b)**	1,979	\$183,925
Noncertified Applicator Training and Recordkeeping – Commercial Applicators (Table 4a)**	1,367,957	\$47,991,940
Noncertified Applicator Training - Private Applicator (Table 4b)**	56,183	\$3,704,492
RUP Sales Recordkeeping (Table 5)**	97,500	\$4,812,600
<b>New Respondent Total</b>	<b>2,280,849</b>	<b>\$108,061,898</b>

\*Estimates may not add due to rounding.

**\*\*Table numbers are reflected from Attachment K**

**13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information.**

There are no operational and/or maintenance costs.

**14. Provide estimates of annualized cost to the Federal government.**

A full summary of all estimates of the respondent burden (hour and costs) and calculation is reflected in **Attachment G**.

**Table 2. Bottom Line Agency Annual Burden and Cost Table**

<b>Agency</b>	<b>Total Burden Hours</b>	<b>Total Cost (\$)</b>
Agency Review and Approval of Certification Plans (Table 7a)**	5,080	\$474,980
EPA-Administered Plans Agency Plans (Table 7b)**	157	\$14,673
<b>Agency Total</b>	<b>5,237</b>	<b>\$489,653</b>

\*Estimates may not add due to rounding.

**\*\*Table numbers are reflected from Attachment G**

**15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.**

Since the Agency is renewing this ICR as is, the total estimated respondent burden for this renewal ICR remains the same at 2,280,849 hours. The only adjustments calculated is the cost in burden which is made to reflect the latest wage labor rates (BLS 2019). These changes are an adjustment.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

There is no set collection schedule for commercial applicators to create or check records of training of noncertified applicators they supervise, or dealers of RUPs to create records of sales. These records are created for each occurrence. Commercial applicators must generate, or verify the existence of, records of the training of noncertified applicators under their direct supervision immediately after training, or prior to each RUP use. These records are required to be maintained for 2 years from the date of an RUP application. Similarly, dealer records of RUP sales are required to be maintained for two years. Although the commercial applicator records and the RUP dealer records are maintained locally and are not required to be submitted to the EPA or the authorized agencies, they must be made available for the EPA or authorized agency officials upon request. Records collected may become part of an investigation or enforcement action.

Certification plans to meet the requirements as revised by the final rule are required to be submitted for review and approval by the Agency. Authorized agencies must submit plans for review and approval to the EPA within 3 years after the effective date of the final rule. All certification plans approved as of the effective date of the final rule will be valid until a revised plan is submitted to the EPA within the required 3-year period, the Agency subsequently makes a determination of its approval, and the authorized agency implements their approved plan, generally within another two years after EPA approval. This submission is anticipated as a one-time event, unless an authorized agency makes significant changes to their plan at another time. Significant changes to the plans must be approved by the Agency prior to making the changes.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

This question not applicable to this ICR

**18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.**

EPA does not request an exception to the certification of this information collection.

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## SUPPLEMENTAL INFORMATION

The annual public burden for this collection of information is estimated to average 1,379,443.81 hours per response over the three-year period. According to the Paperwork Reduction Act, “burden” means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review and understand instructions; prepare and submit reports (including searching data sources); complete and review the collection of information; transmit the information; and keep records.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-OPP-2021-0288, which is available at <http://www.regulations.gov>. This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select “search,” then key in the Docket ID Number identified above.

You can also provide comments to the Office of Information and Regulatory Affairs, Office of Management and Budget via <http://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

All comments received by EPA will be included in the docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

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## LIST OF ATTACHMENTS

The attachments listed below can be found in the docket for this ICR or by using the hyperlink that is provided in the list below. The docket for this ICR is accessible electronically through <http://www.regulations.gov> using Docket ID Number: EPA-HQ-OPPT-2021-0288.

<b><u>Attachment</u></b>	<b><u>Description</u></b>
A	<b>Existing ICR, “Certification of Pesticide Applicators” covering 40 CFR Part 171 prior to the new final rule (OMB No.: 2070-0029; EPA No.: 0155.12)</b> – Available online at the Office of Management and Budget’s RegInfo.gov website at <a href="http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201502-2070-002">http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201502-2070-002</a>
B	<b>7 U.S.C. 136a(d) - FIFRA Section 3(d)</b> – Available at online at the US House of Representatives’
C	<b>7 U.S.C. 136i - FIFRA Section 11</b> – Available at online at the US House of Representatives’
D	<b>40 CFR 171 - Certification of Pesticide Applicators</b> – Available online at the National Archives and Records Administration’s
E	Wage Rate Tables (Authorized Agencies, Private Applicators, Commercial Applicators, RUP Dealers, State Government, Government and EPA) These tables are the source of wage rates used in this ICR amendment. – Available online in the public docket for the final rule: Certification of Pesticide Applicators Rule Revision (40 CFR 171), Docket ID: EPA-HQ-OPP-2021-0287 at <a href="http://www.regulations.gov">www.regulations.gov</a>
F	<b>Consultation Summary</b> _
G	<b>Summary of Respondent Burden</b> – Hours and Costs