

implementation of the revised certification plan as outlined in the 2023 EPA Plan's implementation section. EPA will implement this Federal program to certify applicators of RUPs in areas of Indian country where no other EPA-approved or EPA-implemented plan applies. This plan will not be applicable in areas where a Tribe has opted out of the 2023 EPA Plan consistent with 40 CFR 171.307(c)(2). The 2023 EPA Plan, which supersedes the 2014 EPA Plan, describes the updated process by which EPA will implement a program for the certification of applicators of RUPs in Indian country based upon the certification requirements enumerated at 40 CFR part 171. The final 2023 EPA Plan, in its entirety, is included in the docket.

#### IV. Summary of the Final 2023 EPA Plan

On March 2, 2020, EPA published a **Federal Register** notice seeking comment on proposed revisions to the EPA-administered Federal pesticide applicator certification plan to certify applicators of RUPs in areas of Indian country that are not covered by any other EPA-approved certification plan (Ref. 4). The proposed revisions sought to bring the EPA Plan for Indian country into compliance with the updated CPA regulation at 40 CFR part 171 that was amended in 2017 (Ref. 1). Unit VI of the 2020 notice provides additional background and context for the development of the revised EPA Plan, while Unit VII of that notice provides an overview of the proposed changes to the EPA Plan. EPA did not receive any comments during the comment period for the 2020 notice.

In developing what is now the final 2023 EPA Plan, EPA also consulted with affected Tribes as required under 40 CFR 171.307(c) and 171.311(d)(1). The Tribal consultation period started on February 10, 2020, and was scheduled to end on May 1, 2020. However, due to the impact of the COVID-19 public health emergency, EPA extended the Tribal consultation period to August 3, 2020. During the Tribal consultation period, EPA consulted with federally recognized Tribes on February 26, April 6, and July 15, 2020, to help ensure the proposed revisions to the 2014 EPA Plan effectively met their needs and those of RUP applicators in Indian country. More information about the Tribal consultation can be found on the Tribal Consultation Opportunities Tracking System (Ref. 5).

EPA has finalized many of its proposals as described in the 2020 notice. However, EPA has revised some

of its proposals in response to the feedback received during the Tribal consultation period. In other areas, EPA has refined and provided additional detail to increase clarity and transparency in the plan and the process. These revisions include:

- Clarifying definitions of private and commercial applicators;
- Providing an additional acceptable identification specific to Tribes;
- Adding descriptions of Tribes that have their own certification plans under 40 CFR 171.307(a) or (b);
- Listing out Federal minimum standards for recordkeeping requirements for commercial applicators, certified applicator responsibilities for direct supervision of noncertified applicators, and noncertified applicator qualifications; and
- Outlining the implementation of the revised EPA Plan.

Due to limitation in the CPA regulation, RUPs may not be used legally in Indian country unless the Tribe has an EPA-approved certification plan, the Tribe has entered into an agreement with EPA, or EPA has issued a Federal certification plan for Indian country. The EPA Plan provides that third option for Tribes to allow for applicator certification within Indian country; however, Tribes may also opt out of the EPA Plan and RUP use will generally be prohibited in their areas of Indian country. Tribes may also have their own additional Tribal laws and codes in addition to the EPA Plan and applicators who wish to apply in Indian country should contact the relevant Tribe to ensure the application is compliant with both.

#### V. References

The following is a list of documents that are related to the issuance of this Notice. For assistance in locating these other documents, please see Table 1 in Unit I.B.

1. EPA. Pesticides; Certification of Pesticide Applicators; Final Rule. **Federal Register**. 82 FR 952, January 4, 2017 (FRL-9956-70).
2. EPA. Pesticides; Certification of Pesticide Applicators; Further Extension to Expiration Date of Certification Plans; Final Rule. **Federal Register**. 87 FR 50953, August 19, 2022 (FRL-9134.1-04-OCSPP).
3. EPA. EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides within Indian Country. September 26, 2023. Docket ID No. EPA-HQ-OPP-2022-0509 and Docket ID No. EPA-HQ-OPP-2011-0037.
4. EPA. EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides Within Indian Country;

Proposed Revisions; Notice of Availability and Request for Comment. **Federal Register**. 85 FR 12244, March 2, 2020 (FRL-10005-59).

5. EPA. Tribal Consultation Opportunities Tracking System. Available at <https://tcots.epa.gov/ords/tcotspub/f?p=106:5::988::RR,2::>. Accessed September 20, 2023.

*Authority:* 7 U.S.C. 136–136y.

Dated: September 27, 2023.

**Mary Elissa Reaves,**

*Director, Pesticide Re-Evaluation Division,  
Office of Pesticide Programs.*

[FR Doc. 2023-21997 Filed 10-3-23; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2023-0486; FRL-11436-01-OGC]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *California Communities Against Toxics, et al. v. Regan*, No. 1:22-cv-3005-RC (D.D.C.). On October 5, 2022, Plaintiffs California Communities Against Toxics, Missouri Coalition for the Environment Foundation, Natural Resources Defense Council, and Sierra Club filed a complaint in the United States District Court for the District of Columbia. On December 6, 2022, Plaintiffs filed an amended complaint. Plaintiffs alleged that the Environmental Protection Agency (EPA or the Agency) failed to undertake certain non-discretionary duties under CAA to “review, and revise as necessary . . . no less often than every 8 years” the National Emission Standards for Hazardous Air Pollutants (NESHAP) From Secondary Lead Smelting because more than 8 years have passed since EPA completed the prior review of the NESHAP From Secondary Lead Smelting, (“the 2012 Rule”). In March 2012, Plaintiffs submitted a petition for reconsideration of the 2012 Rule. In December 2012, EPA granted Plaintiffs’ request for reconsideration of the “ample margin of safety” analysis performed for the 2012 Rule and stated its intention to initiate a rulemaking addressing the same. Plaintiffs alleged that EPA failed to perform its obligations to reconsider the 2012 Rule and that this failure

constitutes “agency action unreasonable delayed” under the CAA. The proposed consent decree would establish deadlines for EPA to sign a notice of final rulemaking containing all necessary revisions under the CAA and a notice of final rulemaking to address reconsideration of the “ample margin of safety” analysis in the 2012 Rule.

**DATES:** Written comments on the proposed consent decree must be received by November 3, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0486, online at <https://www.regulations.gov> (EPA’s preferred method). Follow the online instructions for submitting comments.

**Instructions:** All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Pettit, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 566-2879; email address [pettit.elizabeth@epa.gov](mailto:pettit.elizabeth@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Obtaining a Copy of the Proposed Consent Decree**

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2023-0486) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center 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 is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree, and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the

official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

##### **II. Additional Information About the Proposed Consent Decree**

The proposed consent decree would establish deadlines for EPA to sign a notice of final rulemaking containing all necessary revisions to 40 CFR part 63, subpart X, under CAA 112(d)(6), and a notice of final rulemaking to address reconsideration of the “ample margin of safety” analysis in the 2012 Rule under CAA 112. First, for the NESHAP From Secondary Lead Smelting under 40 CFR part 63, subpart X, the proposed consent decree would require EPA to sign a proposed rule by September 30, 2025, and a final rule by September 30, 2026, containing all necessary revisions under CAA 112(d)(6). Second, in response to the reconsideration petition and pursuant to CAA 307, the proposed consent decree would require EPA to sign a proposed rulemaking by September 30, 2025, and a final rule by September 30, 2026, to address the reconsideration of the “ample margin of safety” analysis.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

##### **III. Additional Information About Commenting on the Proposed Consent Decree**

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0486, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to

make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

**Gautam Srinivasan,**

*Associate General Counsel.*

[FR Doc. 2023-22081 Filed 10-3-23; 8:45 am]

**BILLING CODE 6560-50-P**