

# Update: Proposed Federal Plan for Certification of Applicators in Indian country

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**October 2010 RTOC**

# Background



- **Restricted Use Pesticides (RUPs) can only be used by someone who is certified through an EPA approved plan.**
- **Tribes have 3 options for certifying applicators of RUPs.**
  - Develop their own tribal plan;
  - Enter into a written agreement with a state certifying agency, or ;
  - Develop a Federal Certification Plan.
- **5 tribes have EPA-approved plans (4 tribal plans, 1 federal).**
- **This means that in most of Indian country, there is no legal way to certify applicators to apply RUPs.**
- **If there is no plan in place, EPA cannot take action against an applicator for applying an RUP on tribal land without being certified.**
- **In 2009, TPPC requested OPP prioritize this issue and establish a way to certify applicators in Indian country.**

# **Review of Key Elements of OPP's Proposed Plan**

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- 1. Establishes a method for legal use of RUPs in Indian country where no other EPA-approved plan applies.**
- 2. Allows EPA to take action if an uncertified applicator applies RUPs in Indian country.**
- 3. Certification is issued by EPA for RUP use in Indian country. Federal certification is based on a certification issued by a state with an EPA approved State plan.**
- 4. Federal Inspections by EPA or Federally credentialed tribal inspector. Federal enforcement by EPA, if appropriate.**
- 5. Tribe may further restrict or prohibit the use of RUPs through implementation of tribal codes, laws or regulations.**
- 6. Does not preclude a tribe from developing a Tribal Plan or entering into an MOU with a state later.**

# Summary of July RTOC

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## Comments from tribes included:

- 1. EPA must provide better information and consultation.**
- 2. TPPC does not represent the interests of all tribes.**
- 3. Tribes must have control over RUP use on their land.**
- 4. EPA must recognize other tribal mechanisms to limit or control pesticide use, beyond just codes and ordinances.**
- 5. Tribes requested an interactive webinar with OPP.**



# **What has happened since July RTOC**

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- **August – Letters submitted to Steve Owens, Assistant Administrator Office of Chemical Safety and Pollution Prevention (OCSPP).**
  - Pitt River Tribe
  - Kashia Band of Pomo Indians of the Stewart's Point Rancheria
  - Summit Lake Paiute Tribe
- **September – Webinar for TPPC**

# What has happened since July RTOC

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- **October – Revised draft Plan presented to TPPC**

**NEW:** Only certify applicators from contiguous states, with some exceptions.

**NEW:** Language now includes “tribal codes, laws, regulations or other applicable tribal requirements”

**TPPC recommendations.**

1. Plan must include requirement for applicators to notify tribe of RUP applications.
2. OPP should host informational webinar prior to consultation.

**OPP response:**

1. Determine whether agency has legal authority to require notification.
2. Considering webinar.

# Current Timeline

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**Fall 2010/early 2011: Tribal Consultation (letters to tribes announcing calls in late November)**

**2011: Publish first Federal Register notice announcing public comment on draft plan.**

**2011: Implement final Plan.**



# Issues

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- **Should the Plan include an opt-out provision (no RUP use at all)? If so, how?**
- **Should the Plan allow ‘partial’ certification (for specific chemicals or categories but not all uses), according to needs to the tribe?**
- **Should the Plan require applicators to notify a tribe prior to RUP application, if the tribe wants it? If so, how?**