PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq. by revising the entry for “Atlanta, GA:2” to read as follows:

§ 81.311 Georgia.

* * * * * 

GEORGIA—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

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1 This date is July 20, 2012, unless otherwise noted.
2 Excludes Indian country located in each area, unless otherwise noted.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 171

[FR Doc. 2017–10934 Filed 6–1–17; 8:45 am]

BILLING CODE 6560–50–P
I. General Information

On January 4, 2017, EPA published a final rule revising the regulation concerning the certification of applicators of restricted use pesticides (RUPs), promulgated in 40 CFR part 171 (82 FR 952; FRL–9956–70). The original effective date of March 6, 2017 was extended to March 21, 2017 by a final rule published in the Federal Register on January 26, 2017, entitled “Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency Between October 28, 2016 and January 17, 2017” (82 FR 8499). In that rule, EPA delayed the effective dates of the thirty regulations, including the final rule revising the regulation concerning the certification of applicators of restricted use pesticides (RUPs) issued on January 4, 2017 (82 FR 952; FRL–9956–70), as requested in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review” (January 20 Memorandum). The January 20 Memorandum directed the heads of Executive Departments and Agencies to postpone for 60 days from the date of the January 20 Memorandum the effective dates of all regulations that had been published in the Federal Register but had not yet taken effect.

The January 20 Memorandum further directed that where appropriate and as permitted by applicable law, agencies should consider a rule to delay the effective date for regulations beyond that 60-day period. Accordingly, on March 20, 2017, EPA published the final rule “Further Delay of Effective Dates for Five Final Regulations Published by the Environmental Protection Agency Between December 12, 2016 and January 17, 2017” (82 FR 14324), to give recently arrived Agency officials the opportunity to conduct a substantive review of those five regulations, which included the revised Certification of Pesticide Applicators rule. Pursuant to that March 20, 2017 rule, the effective date of the revised Certification of Pesticide Applicators rule was extended to May 22, 2017.

On May 15, 2017, EPA solicited public comment on a proposed 12-month delay of the effective date until May 22, 2018 (82 FR 22294; FRL–9962–31). EPA received more than 130 comments in response to the May 15, 2017 request for comments on the proposal to further delay the effective date until May 22, 2018. On May 22, 2017, EPA published a rule that made an immediate extension of the effective date of the revised Certification of Pesticide Applicators rule until June 5, 2017 in order to allow additional time for Agency officials to consider and respond to the public comments.

Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), allows the effective date of an action to be less than 30 days from its publication date when a good cause finding is made. The primary reason for the 30-day waiting period between publication and effective date is to allow affected parties to adjust to new requirements. This rule does not impose any new requirements but rather postpones the effective date of requirements that are not yet in effect. As noted below, allowing the rule to go into effect could cause confusion and disruption for affected parties if the rule were subsequently substantially revised or repealed. Thus, EPA finds there is good cause to make this rule effective immediately upon publication.

In addition, EPA still has only one Senate-confirmed official, and the new Administration has not had the time to adequately review the January 4, 2017 certification rule. This extension to May 22, 2018, will prevent the confusion and disruption among regulatees and stakeholders that would result if the January 4, 2017 rule were to become effective (displace the existing regulation) and then substantially revised or repealed as a result of administrative review.

In this final rule, EPA is delaying the effective date of the January 4, 2017 revisions to the Certification of Pesticide Applicators rule until May 22, 2018. EPA is delaying the effective date of the January 4, 2017 revisions to the Certification of Pesticide Applicators rule until May 22, 2018 in accordance with the Presidential directives as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” and the principles identified in the April 25, 2017 Executive Order “Promoting Agriculture and Rural Prosperity in America.”

II. Comments and Responses

EPA received more than 130 comments relevant to the proposal to further delay the effective date of the January 4, 2017 Certification of Pesticide Applicators rule until May 22, 2018. Seventeen comments were not relevant to this action because they did not address the extension of the effective date and instead urged EPA to ban chlorpyrifos or only included specific comments about the January 4, 2017 rule. Among the comments, 18 commenters supported the proposed 12-month extension of the effective date and the rest opposed the proposed 12-month extension.

Comments—specific provisions.

About 20 of the comments included input on the specific provisions of the January 4, 2017 Certification of Pesticide Applicators rule.

EPA response—specific provisions.

This final rule focuses on the extension of the effective date of the certification rule. Comments on the specific provisions of the revised certification rule are outside of the scope of this final rule and will be considered within the review of the rule through the Regulatory Reform Agenda efforts.

Comments—support.

The comments supporting the 12-month extension of the effective date came from state pesticide regulatory agencies, a pesticide safety education program and a number of organizations representing state departments of agriculture, pesticide safety education programs, pesticide applicators, growers, pesticide manufacturers, and pesticide retailers.

The commenters supported the 12-month extension for a variety of reasons. The most common reason was to allow EPA and states more time to prepare for the revisions to state certification programs, engage stakeholders, and develop information the states need to efficiently implement the January 4, 2017 rule. Some commenters supported the 12-month extension to give EPA time to revisit certain aspects of the January 4, 2017 rule and identified specific requirements, such as minimum age.

EPA response—support. EPA generally agrees with these comments. During the next 12 months, EPA plans to engage and work with the certifying authorities (states, tribes and federal agencies), pesticide safety education programs, pesticide applicators and other stakeholders to develop checklists, guidance and tools to facilitate the development of revised certification plans and to discuss how to effectively implement the certification rule. In addition, EPA will conduct a substantive review of the questions of fact, law and policy—all within the context of the very broad cost-benefit standard in FIFRA—during this period.

As mentioned above, comments on the specific provisions of the revised certification rule will be considered within the review of the rule through the Regulatory Reform Agenda efforts.

Comments—adjust implementation schedule. One state pesticide regulatory agency supported the 12-month extension of the effective date of the Certification of Pesticide Applicators Rule as long as the implementation schedule in the January 4, 2017 rule is
extended as well. This implementation schedule allowed three years for certifying authorities to submit revised plans and an additional two years for EPA to review the plans and agree upon a timeline for the certifying authority to implement the plan.

**EPA response—adjust implementation schedule.** EPA agrees with this comment and intends to make corresponding changes to the implementation dates in 40 CFR 171.5 in a subsequent rulemaking.

**Comments—implement protections sooner.** The commenters opposing the 12-month extension included over 30 non-governmental organizations representing a range of interests, including but not limited to farm workers, environmental advocates, occupational or migrant health clinics and employment law, and many private citizens. The concerns raised by the commenters opposed to the delay covered several areas, which are summarized and responded to below. The Agency has concluded that the use of the extension would increase the risk of serious adverse effects on human health and the environment and one commenter pointed out that EPA identified preventable restricted use pesticide exposures to humans and the environment in the January 4, 2017 rule. This commenter stated that delaying the rule by a year means these types of exposures will occur for an additional year.

**EPA response—implement protections sooner.** The January 4, 2017 final certification rule would not have immediately put in place additional protections that would prevent or eliminate the types of exposures identified by EPA in its benefits analysis. The January 4, 2017 rule included an implementation schedule where the certifying authorities would have up to three years to submit revised certification plans that conform to the revised standards, so there already was going to be a delay in the protections actually being implemented by the certifying authorities. If EPA develops checklists, guidance and tools to facilitate the development of revised certification plans during the 12-month delay, it is possible that many certifying authorities will be able to submit the revised certification plans well before the three-year deadline for submitting plans.

**Comments—basis for extension.** Several commenters argued that EPA did not provide a rational basis for extending the effective date by a year, with one stating that, for that reason, the rule to extend the compliance date is arbitrary and capricious and an abuse of discretion. The commenters questioned what steps have been taken during the previous 4 months of extensions, what analyses would be done in the next year and why EPA needs 12 more months.

**EPA response—basis for extension.** Out of the 30 final regulations whose effective dates were delayed by the January 26, 2017 final rule, this is one of the few regulations with an effective date that has been extended several more times. The Administrator has determined that the certification rule requires a substantive review of the questions of fact, law and policy—all within the context of the very broad cost-benefit standard in FIFRA—so an additional 12 months is necessary and will provide more certainty to certifying authorities, pesticide safety education programs, pesticide applicators and other stakeholders than to have several medium term extensions. Extending the rule by 12 months is also more efficient for EPA staff and allows them to focus on the substantive review rather than drafting and implementing several medium term extensions. The 12-month extension also provides time for EPA to consider revisions to the certification rule based on input received through the Regulatory Reform Agenda efforts.

**Comments—Administrative Procedures Act.** Several comments argued that the May 15, 2017 rule violated the Administrative Procedures Act (APA) in several ways. First, commenters argued that the May 15 rule is a “final rule” that makes a significant amendment to a lawfully promulgated regulation without first proposing the change and seeking public comment. Second, commenters raised a number of concerns about the five-day comment period. Specifically, commenters argued that a delay of the effective date for 12 months is functionally a substantive amendment or rescission of the certification rule so the APA and FIFRA require a notice and comment period of at least 30 days. Commenters also stated that sections 553(d)(1) and (d)(3) of the APA are inapposite (not pertinent) as legal authority for dispensing with a “full . . . comment period” because these sections provide grounds to the generally applicable requirement that no final rule take effect sooner than 30 days after its publication but not the length of the comment period. Some commenters argued that the good cause exception to the APA’s notice requirement in 5 U.S.C. 553(b)(B) is not relevant to the 2017 rule. Lastly, commenters disagreed with EPA’s reasoning in the May 15, 2017 rule that a full 30-day comment period is impractical, unnecessary and contrary to the public interest.

**EPA response—APA.** The May 15, 2017 FR Notice was styled as a final rule to be consistent with standard procedures of the Office of the Federal Register, which require that rules that affect existing rules (in the case of rules that address changing the effective date of an existing rule) must appear in the “Final Rules” section of the Federal Register. See OFR Document Drafting Handbook (https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf) at section 3.1. Irrespective of the “Final Rule” caption, EPA considers the May 15 Federal Register Notice to have the effect of a proposed rule under the APA. This is clear from the phrase “request for comments” in the action line, as well as from the text of the FR Notice, where EPA expressly stated that it was “proposing to further delay the effective date” and requested comment on the proposed extension. The Agency’s implementation of this action with an abbreviated opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(B), in that providing additional time for public comment is impracticable, unnecessary and contrary to the public interest. The delay of the effective date until May 22, 2018, is necessary to give Agency officials the opportunity for further review and consideration of the certification rule, consistent with the memorandum of the Assistant to the President and Chief of Staff, dated January 20, 2017, and the principles identified in the April 25, 2017 Executive Order “Promoting Agriculture and Rural Prosperity in America.” Given the imminence of the certification rule effective date, allowing a longer period for comment on this delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

The 90-day comment period for the 2015 proposed rule, combined with EPA’s extensive stakeholder outreach, provided EPA with robust public comment regarding the risks and benefits associated with the January 4, 2017 certification rule. Inasmuch as there was already a robust public comment on the merits of the certification rule, the narrow issue of when the rule should become effective could reasonably be addressed in a short period of time. If EPA had not shortened the comment period to five days, the January 4, 2017 certification rule would have gone into effect and would have caused unnecessary confusion and disruption to certifying authorities.
The U.S. Environmental Protection Agency (EPA)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

Correction

In rule document 2016–29882, appearing on pages 93824–93831, in the Issue of Thursday, December 22, 2016, make the following correction:

On page 93827, in the second column, in the last line “(≤15% CT)” should be “(≥15% CT)”.

| FR Doc. C2–2016–29882 Filed 6–1–17; 8:45 am |
| BILLING CODE 6560–50–P |

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

Approval of Alternative Final Cover Request for Phase 2 of the City of Wolf Point, Montana, Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking direct final action to approve an alternative final cover for Phase 2 of the City of Wolf Point landfill, a municipal solid waste landfill (MSWLF) owned and