



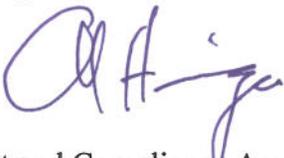
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 6, 2010

MEMORANDUM

TO: Regional Pesticide Supervisors

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Office of Pesticide Programs

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Agriculture Division
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SUBJECT: FY2011-2013 Joint OPP/OECA Cooperative Agreement Guidance

Attached is the final 2011-2013 Joint OPP/OECA Cooperative Agreement Guidance. Please share this with our state, territorial and tribal co-regulators in your Region. Regions and state, territorial and tribal applicants should use this guidance in negotiating cooperative agreements for FY2011-2013.

States and tribes play a vital role in regulating pesticides and protecting human health and the environment from potential adverse effects of pesticide use. The core work outlined in this guidance is essential to help us meet the goals of the national pesticide and enforcement programs. However, EPA recognizes that the current economic crisis has severely strained grantee resources. Therefore, we have taken several steps in the grant guidance to address the pressures being faced by state and tribal pesticide regulatory programs. We have prioritized program and enforcement goals and the activities needed to support and harmonize those goals. New priorities have been offset by recognizing that other core work may not be addressed. Flexibility has been added to emphasize work that best addresses local concerns. Finally, we have tried to reduce the administrative burden by allowing multi-year cooperative agreements and simplified reporting.

The guidance is attached as Adobe Acrobat PDF files. This cover letter, final guidance and all appendices will be uploaded as Adobe PDF files to the EPA compliance website within the next week. The URL (website address) is: <http://www.epa.gov/compliance/state/grants/fifra.html>

Thank you for the useful comments you provided during the various review cycles. If you have any questions on the guidance, please contact either Dan Helfgott at 703-308-8054 for pesticide program questions or Al Havinga at 202-564-4147 for any pesticide enforcement related questions.

Thank you

Attachments

**FISCAL YEAR 2011-2013 JOINT EPA OPP/OECA STATE/TRIBAL
COOPERATIVE AGREEMENT GUIDANCE**

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SECTION 1: INTRODUCTION

1.1 Purpose of this Guidance

The purpose of this guidance is to: (1) identify pesticide program and compliance and enforcement activities that should be pursued under cooperative agreements with states to support the performance measures for the National Pesticide and Enforcement Programs; (2) identify other activities eligible for state/tribal cooperative agreement funds in fiscal years 2011 - 2013, (3) describe requirements and expectations of applicants; and (4) provide anticipated funding information. This guidance, developed by EPA's Office of Pesticide Programs (OPP) and Office of Enforcement and Compliance Assurance (OECA), is specifically directed to the EPA Regional Offices that negotiate cooperative agreements to conduct pesticide program development, implementation activities, and compliance/enforcement activities. OPP and OECA are issuing this guidance for fiscal years 2011-2013.

Section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, authorizes EPA to enter into cooperative agreements with states, territories, and Indian tribes (hereafter referred to collectively as "applicants") to conduct pesticide enforcement programs and Section 23(a)(2) provides for certification and training programs. Pursuant to the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for FY1999 (Pub. L. No. 105-276, Title III, 112 Stat. 2499 (1998)), pesticide program implementation grants under section 23(a)(1) of FIFRA are available for "pesticide program development and implementation, including enforcement and compliance activities."

This joint guidance is intended to help coordinate development/coordination activities and compliance/enforcement under the pesticide program. Thus, the two sets of activities are interconnected, but may be handled either independently or under a single cooperative agreement.

EPA recognizes that the current economic crisis has strained grantee resources. States and tribes play a vital role in regulating pesticides and protecting human health and the environment from potential adverse effects of pesticide use. The Agency also recognizes the significant burden faced by states and tribes in achieving their goals during a period of increasingly tight resources.

EPA has taken several steps to address the pressures being faced by pesticide regulatory programs in this guidance. We prioritized program and enforcement goals and the activities needed to support and harmonize those goals between the programs. We continue to allow for new priorities by eliminating some existing required activities and adding flexibility to emphasize work that best addresses local concerns. Multi-year cooperative agreement guidance minimizes shifts in priorities and provides stable planning for states. Within the context of this Guidance, regional offices should be flexible during grant negotiation process to match the level

of core work to the available resources.

1.2 Enhanced Pesticide Program and Compliance/Enforcement Collaboration

Steve Owens, Assistant Administrator for OPPTS, and Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA), launched an effort for enhanced collaboration between the two programs. Although both Offices have distinct missions, they are mutually reinforcing and each program has unique tools and expertise to bring to bear on the common challenge of protecting the public and environment from pesticide risks. To address the increasing program demands and issues, the two programs need to work together even more closely. This includes pursuing joint work and exchanging timely and meaningful information on case development.

An important part of this cooperative effort is to better align our Offices in articulating common priorities in the performance management documents for regions and states. Clear alignment of priorities will avoid the inefficient confusion, competing demands and splintering of limited resources that can result from inconsistent program management priorities and guidance from OPP and OECA. Based on inter-program discussions and input from the regions, states and tribes, improvement has occurred in aligning priorities.

OPP's highest priorities for regional attention and for OPP/OECA collaboration are:

- Pesticide Worker Safety, including assistance to support the new soil fumigation requirements
- Pesticides and water resource protection
- Antimicrobial hospital disinfection efficacy/misbranding
- Pesticide Container-Containment Regulation implementation

While these are not the only valuable activities for either program, they represent the most important areas where both programs will work together to achieve meaningful progress on risk reduction. Some of these priority activities are included in this Guidance for significant action at this time, others are more Headquarter's focused, but may require regional and state engagement with stakeholders. This coordinated approach will enhance overall program efficiency and accelerate progress toward achievement of our common strategic objectives as one National Pesticide Program.

1.3 Changes in this Guidance

This section describes the changes in the FY2011-2013 Guidance in comparison to the FY2008-2010 Guidance.

1.3.1 Pesticide Program Cooperative Agreements Changes

1. Summary of Major Changes from FY2008-2010 Guidance for Strategic Plan Targets
 - In the 2008-2010 Guidance OPP reflected language of the 2006-2011 Strategic Plan for measurable environmental and human health outcomes. For the 2011-2013 Guidance, we used language from the 2009-2014 Strategic Plan Change Document, since the final 2009-2014 Strategic Plan final has been delayed to allow additional time for review by the Agency's new leadership.
 - Additional flexibility provided for use of funds for worker protection (excluding C&T), container/containment, protection of water resources, and endangered species to address most pressing local needs.
 - Added a statement in Section 2.1 to allow greater flexibility for shifting funds across pesticide program areas during the current state fiscal crises. For FY2011- 2013, funds supplied by the Office of Pesticide Programs may be shifted across pesticide program areas (excluding C&T) to allow states to address the higher priority pesticide concerns within the state in the program areas of worker safety, container/containment, pesticides in water, and endangered species.
2. Summary of Major Change from FY2008-2010 for Section 2.1 Regarding Multi-year Cooperative Agreements and Workplans
 - Added a statement in Section 2.1 that Regions are encouraged to pursue multi-year cooperative agreements and workplans, for the period of this grant guidance, where both the region and grantee agree that such an approach would reduce administrative burden. This is caveated with a statement that multi-year agreements and workplans would be subject to availability of funds and changing priorities or current events.
3. Summary of Major Changes from FY2008-2010 Worker Safety Guidance:
 - Under the "Core Activities for WPS" section and "Core Activities for C&T," added a "soil fumigant outreach" component to the required outreach/education activities that need to be carried out. For FY2011-2012, for some high fumigant use states, it may be appropriate for the grantee and region to agree that outreach on the new soil fumigation requirements to occur at the expense of all other WPS outreach core activities
 - Eliminated the worker safety reporting form and collection of previously required worker safety reporting information other than the certified applicator reporting information required by 40 C.F.R. Part 171 that is collected in CPARD. This should significantly reduce the tracking and reporting burden on states/tribes.

- Consolidated all four required WPS-related outreach activities under one core WPS activity, “Conduct WPS-related Outreach and Education.”
- Under the “Supplemental Activities for C&T” section, added an additional suggested activity, “Promote IPM in Applicator C&T Programs,” to the list of suggested activities to encourage states/tribes to promote inclusion of IPM information in their applicator certification and training programs.
- Under the “Supplemental Activities for WPS” and “Supplemental Activities for C&T” sections, included updated information about the schedule for publication of the proposed worker safety rule revisions for 40 C.F.R. Parts 170 and 171, under the suggested activities, “Provide Comment of Proposed 40 C.F.R. Parts 170 and 171 Regulation Changes.”

4. Summary of Major Changes from FY 2008-2010 Water Quality Guidance

- Added a section to address activities to support implementation of pesticide NPDES permits. Where appropriate, state/tribal activities to support the implementation of Pesticide NPDES permits issued under the Clean Water Act (CWA) may be included in workplan and funded with pesticide program grants. These activities may include offering technical assistance to review draft and final permits (e.g., providing information on issues related to pesticide use, impacts and/or best management practices), or outreach and distribution of materials provided by EPA or the state/Tribal Water Agencies to educate pesticide users who may fall under the new permits and requirements.
 - For FY2011 and 2012, for states/tribes that will need a heavy investment in this area, it will be appropriate for regions to allow workplans to reflect significant reductions to workload and performance expectations for activities related to the three-tier approach for managing pesticides in water.
- End of Year reporting is now done via the POINT system and therefore we have removed the Water Quality End-of-Year Reporting Form that was in the FY 2008-2010 Grant Guidance.
- Consistent with reporting for C&T accomplishments in CPARD, reporting in POINTS is now required by December 31, regardless of the actual grant project period.
- To eliminate confusion with work done by the EPA Office of Water, the program is now referred to as the Pesticides in Water Program.
- Added two **reporting** measures; 1) Counting re-evaluations of pesticides of interest or concern, and 2) Counting pesticides of concern that are no longer a concern. For

both these measure, there would be **no** specific commitments negotiated in the workplans. These measures would only be for the purposes of giving states credit for their work and understanding the overall progress of the program.

5. Summary of Major Changes from FY2008-2010 Endangered Species Guidance

- Because of competing priorities and because there are so few endangered species bulletins in place or being developed in the next few years, for FY2011-2013, field program work to support the Endangered Species Pesticide Protection Program is not considered a priority or “core” work. If endangered species concerns are not viewed by the grantee as a priority, Regions and the grantee may agree not to include any endangered species activities in the workplan. Further, the region and grantee may agree that funds used to support endangered species activities may be shifted to other pesticide program areas that the region and state agree present a more immediate concern for the state or tribe.
- Recommended Activities to Support the Endangered Species Protection Program have been expanded. One or more of a number of activities can be chosen in place of or in addition to outreach and education.
- Additional options have been added to include support for risk assessment and risk mitigation, maintaining relationships with local and regional fish and wildlife agencies, and working with certification and training staff to provide endangered species information for Pesticide Applicator Training.
- States and tribes are also given the option of doing a special endangered species project.

6. Summary of Major Changes from FY2008-2010 Container/Containment

- Removed the three activities from the 2008-2010 guidance. Two of the activities about determinations that states have adequate residue removal compliance programs and determinations about the equivalency of state containment regulations have been completed. The other activity was to conduct outreach and education, which has been incorporated as a possible component of developing implementation programs.
- Added the following two activities that are appropriate during the first few years of the container-containment regulations going into effect: (1) developing an implementation program for the containment, refillable container and repackaging regulations; and (2) keeping EPA (HQs and/or regions) informed about changes to state statutes and regulations regarding pesticide container or containment standards.

7. Summary of Major Changes from FY2008-2010 to the Program Reporting & Evaluation Section

- Revised Section 4.2 in the guidance to reduce the reporting burden on grantees by stating that information collected in CPARD for Worker Safety, POINTS for Pesticides in Water and Appendix 11 of the guidance for Endangered Species Protection Program need not be repeated in an end-of-year evaluation report submitted to OPP by the EPA Regional Office.
- Revised the language of the section on Significant Incident Reporting to explain that this information is useful for OPP to determine if there are patterns of incidents requiring new risk mitigation.

1.3.2 Compliance and Enforcement Program Cooperative Agreements Changes

1. Summary of Major Changes from FY2008-2010 Guidance to Priority Activities

- In the 2008-2010 Guidance, OECA listed the following priorities: (1) Worker Protection Compliance and Enforcement Activities; (2) Program Performance Reporting; and (3) Section 19(f) Compliance and Enforcement Activities. In the 2011-2013 Guidance, OECA has selected two new priorities: (1) Reducing Chemical Risk and (2) Protecting Underserved and Vulnerable Populations.
- OECA is taking a new approach to its priorities during this grant cycle. Each priority has several listed activities under each. Grantees should agree in their work plan to conduct inspections and perform related compliance and enforcement activities under at least one of the listed activities for each priority. The appropriate number of inspections and mix of activities is to be negotiated between grantees and their EPA regional office.

2. Summary of Major Changes from FY2008-2010 Guidance to Core Activities

- OECA revised Section 3.2.1.10 Antimicrobial to describe current program goals and expected core activities.
- OECA revised Section 3.2.1.11 Endangered Species to describe current program goals and expected core activities.
- Since the WPS is no longer a priority under the FY2011-2013 Guidance, OECA added 3.2.1.13 that describes core activities under the WPS.
- Since Section 19(f) is no longer a priority under the FY2011-2013 Guidance, OECA added 3.2.1.12 Container/Containment

3. Summary of Major Changes from FY2008-2010 Guidance to Optional Program Activities
 - OECA revised 3.2.2 Optional Program Activities to reflect the current program details and to provide updated contact information.

4. Summary of Major Changes from FY2008-2010 Guidance to Reporting Requirements
 - Added section 4.1.5 to describe reporting requirements for Container/Containment inspections.
 - Section 4.1.5 in the FY2008-2010 Guidance is now Section 4.1.6. The due dates listed have been revised to include the due date for the new Container/Containment 5700-33H form.

5. Summary of Major Changes from FY2008-2010 Guidance to Appendixes
 - Added Appendix 7a that describes how to complete the new Container/Containment 5700-33H form
 - Appendix 7b contains the new Container/Containment 5700-33H form.

SECTION 2: FY2011-2013 APPROACH TO PESTICIDE PROGRAM STATE/TRIBAL COOPERATIVE AGREEMENTS

2.1 *General Method*

The approach outlined in this grant guidance for FY2011-2013 is intended to provide significant flexibility, maximize success for the National Pesticide Program performance measures, accomplish certain goals for the specific program areas, ensure accountability for funds, and advance broad goals for pesticide management programs. In general, OPP describes in this guidance a broad goal for pesticide management programs conducted by the applicants. We also define specific performance measures and *levels of attainment* for each specific program area (pesticides in water, endangered species, worker protection and certification programs, and pesticide container/containment). Within the constraints of the grant funds provided, and the current state fiscal crisis, and local priorities, the state/tribe will need to commit to maximize performance measure results and reach the specific *levels of attainment* for each specific program area. If a state/tribe can show no further progress in that National Pesticide Program Performance Measures or has already reached the level of attainment for a specific program area, they may negotiate additional program activities that will advance the *Pesticide Management Goal*.

The Pesticide Program portion of this guidance includes both “core” and “supplemental” activities. The “core activities” are those activities that we believe are essential to baseline operation of a program area, achieving environmental results, maximizing success with our new performance measures, or providing data necessary to support the performance measures. Core activities are required to appear in cooperative agreements; however the appropriate level of effort and resources devoted may be negotiated depending on the specific needs and priorities of the state. The guidance also includes “supplemental activities” which States/tribes should strongly consider. “Supplemental activities” are optional and not considered essential to the baseline operation of programs, however, EPA feels these activities will greatly enhance program effectiveness.

In order to allow greater flexibility during the current state fiscal crises, for FY 2011-2013, funds supplied by the Office of Pesticide Programs may be shifted across pesticide program areas (excluding C&T) to allow the grantee to address the most pressing pesticide state/tribal concerns within the program areas of worker safety, container/containment, pesticides in water, and endangered species. In other words, as long as the grantee is maintaining some level of work described under the core requirements for a program area, funds may be shifted to another pesticide program area of greater local concern.

Regions are encouraged to pursue multi-year cooperative agreements and workplans, for the period of this grant guidance, where both the Region and grantee agree that such an approach would reduce administrative burden. However, agreements and workplans would be subject to

availability of funds and changing priorities or current events. OPP acknowledges that certain activities and functions of a Pesticide Management Program are not predictable. For example, throughout a given time period, a situation may arise whereby the recipient must act to address a crisis or the Program Office may be required to obtain certain information or institute certain activities in the field. To the extent possible, OPP encourages the Regions and Cooperative Agreement recipients to provide latitude within the agreements to account for such unforeseen circumstances.

2.2 Program Goals and Activities

2.2.1 The Pesticide Management Goal

State/tribal cooperative agreements are intended to not only support the National Pesticide Program Performance Measures and accomplish specific levels of attainment within four specific program areas but also, to recognize and/or establish an applicant's pesticide management program capable of advancing an overall environmental goal. The following *Pesticide Management Goal* allows the flexibility necessary for the state/tribe to carry out activities such as education, alternative management strategy initiatives including IPM programs, collection and disposal initiatives among others. It also permits increased activity in one or more of the four specific program areas if that is the applicant's priority.

THE PESTICIDE MANAGEMENT GOAL

It is the goal of EPA's National Pesticide Program, in partnership with the state, territory and tribal lead agency for pesticide management activities, to assure that pesticides that are available for use are sold, distributed and used properly and in a way that is protective of human health and the environment. Under its statutory authority, the National Pesticide Program's responsibilities include protecting consumers, pesticide users or workers who may be exposed to pesticides, and protecting eco-systems, including non-target plants and species. Because many pesticides are potentially hazardous, the Agency serves an important role as a selective gateway to the pesticide market and an effective steward of pesticides already on the market. Achieving these protective outcomes requires the combination of programs and activities by citizens, pesticide users, states, tribes, EPA Regions, the EPA Office of Pesticide Programs (OPP), the EPA Office of Enforcement and Compliance Assurance (OECA), and other partners.

2.2.2 Levels of Program Attainment

For FY2011-2013 state/tribal cooperative agreements, all applicants with continuing cooperative agreements must commit to reach the following levels of attainment for each of the four specific program areas. The activities listed as core activities are either expected to maximize results for the National Pesticide Program Performance Measures, or are required to

provide data for those measures. Applicants who do not reach levels of attainment negotiated in the workplans, or demonstrate results via the performance measures outlined in the cooperative agreements by the end of each fiscal year may only be funded in the subsequent year for the specific program areas of worker safety, pesticides in water, endangered species, and container/containment activities, and may not be provided funding for “**Additional Program Activities**” listed in Section 2.2.3 of this guidance. *(If this were a multi-year funded cooperative agreement, then results may not necessarily be obtained after a single fiscal year).* Applicants must negotiate specific commitments in specific program areas with the regional office.

It is recognized that circumstances may occur which require a state/tribe to modify their commitments once the state/tribal cooperative agreement is in place (e.g., loss of staff, state/tribal budget cuts). If this occurs, the state/tribe must work with the Regional Office to reach agreement on new commitments. If these changes result in failure to reach the level of attainment, the Regional Office must consider this when determining whether to approve any activities beyond the core activities listed in this grant guidance for future state/tribal cooperative agreements as mentioned above.

OPP recognizes that circumstances may occur for Tribes that would require Regions to negotiate separate levels of attainment on a case by case basis. EPA Regions will consider any applicant’s consistent failure to demonstrate progress toward reaching the agreed upon levels of attainment in funding decisions for the FY2011-2013 cycle.

The following are the levels of attainment for each of the four specific program areas for FY2011-2013 state/tribal cooperative agreements, which are Pesticide Worker Safety, Pesticides in Water, Endangered Species Protection, and Pesticide Container and Containment.

2.2.2.1 Pesticide Worker Safety

OPP’s Pesticide Worker Safety Program, and the activities described in this section supports the Agency’s Strategic Plan, Goal 4, objective 4.1, sub-objective 4.1.3, “Protect Human Health from Pesticide Risk,” and the associated strategic targets (these are further described in the "*Worker Safety Program Performance Measures and Indicators*" section of this program guidance). Preventing or reducing occupational pesticide exposures, incidents and illnesses is a high priority for OPP, and the primary goal of OPP’s Pesticide Worker Safety Program. The principal means for accomplishing the Agency’s worker safety program goals is through implementation of the Worker Protection Standard (WPS) and Pesticide Applicator Certification (C&T) regulations (40 CFR Parts 170 and 171). Since pesticide worker safety is one of OPP’s highest priorities for FY2011-2013, state/tribal partners working with EPA under FIFRA pesticide cooperative agreements should direct appropriate effort and resources toward assuring effective implementation of the WPS and C&T regulations by carrying out the activities outlined in this section of the guidance.

The core activities listed below are those activities deemed necessary to be carried out by states/tribes to assure effective baseline implementation of the WPS and C&T regulations. At a minimum, states/tribes must commit to carrying out the core activities for the WPS and C&T

programs described below, and submitting the required reporting information needed for program management and accountability. OPP wants to emphasize the importance of advancing state/tribal pesticide worker safety programs beyond baseline programs. Therefore, in addition to carrying out the required core activities outlined below, states/tribes are encouraged to undertake work on one or more of the supplemental activities listed below. Supplemental activities are optional, but EPA believes these activities will enhance program implementation and lead to better overall protection for pesticide workers. States/tribes with high populations of farmworkers or unique pesticide worker safety issues should consider a higher level of activity in this program area. **[NOTE: EPA Regional Offices may require additional Region-specific grant activities, commitments and/or reporting requirements. Any such requirements will be covered in Region-specific grant guidance or during annual work plan negotiations.]**

Core Activities for WPS

1. **Conduct WPS-related Outreach and Education.** States/tribes will provide WPS-related outreach and education to the regulated and protected community. For FY2011-2013, WPS-related outreach efforts need to focus on the following priority areas:
 - *Outreach to affected establishments on new soil fumigant labeling requirements. States/tribes must make information available to affected agricultural and commercial pesticide handling establishments that use or handle soil fumigants and about the new risk mitigation labeling requirements being implemented for the soil fumigants chloropicrin, dazomet, metam sodium/ potassium, and methyl bromide. The Agency published amended reregistration eligibility decisions (REDs) for the above soil fumigants on June 3, 2009. The RED decisions call for new risk mitigation measures for the soil fumigants to mitigate risks to fumigant handlers and post-application workers, as well as bystanders. EPA expects fumigant labels with the new label requirements implementing the risk mitigation measures will begin to appear in the field in 2010 and 2011. Ensuring fumigant users understand and comply with the new label requirements is an important component of the risk mitigation package. Therefore, states/tribes must conduct outreach and education to the affected user community about the new fumigant labeling requirements to ensure they understand the soil fumigant labels in order to facilitate compliance. EPA will develop materials to aide these efforts such as fact sheets, standard presentations, inspector checklists, and Q&As. States/tribes should utilize these materials at outreach opportunities such as site visits, grower meetings, and applicator training/recertification programs.
 - ***[NOTE: For FY 11-12, for some high fumigant use states, it may be appropriate for Regions to approve workplans in which outreach on the new soil fumigation requirements will occur at the expense of all other worker protection outreach core activities listed below. In the June 2009 amended soil fumigant REDs, the Agency identified the following states as high soil fumigant use states: California, Washington, Idaho, Oregon, Wisconsin, Michigan, Florida, Minnesota, North Carolina, Virginia, Arizona, Nevada, Georgia, Colorado, and North Dakota.]**

- Outreach to workers on WPS protections, filing complaints and reporting incidents. States/tribes will make information available to pesticide workers and handlers about the protections provided by the WPS regulation, how to report occupational pesticide exposure incidents and illnesses, and how to file complaints with the State/Tribal Lead Agency regarding potential WPS or other pesticide violations.
 - Outreach to WPS-covered establishments on WPS rule requirements. States/tribes will make WPS compliance assistance information available to WPS-covered agricultural establishments. States/tribes should focus on those establishments whose operation or pesticide use would pose a high potential risk to workers and handlers (based on your state/tribal WPS targeting strategy), and those establishments with a history of non-compliance or enforcement problems (states/tribes should use compliance data from their field inspections to identify such areas). [**NOTE: States/Tribes should provide information to WPS-covered establishments on how to obtain the WPS compliance assistance materials from EPA's Agricultural Compliance Assistance Center (www.epa.gov/agriculture or 1-888-663-2155).**]
 - Outreach to rural health care providers. States/tribes will make information about filing pesticide-related tips/complaints available to rural health care providers, migrant clinics, rural health service organizations, farmworker service organizations and other such groups that may provide health services to pesticide workers or handlers, so affected persons and organizations know how to report information or file tips or complaints with the State/Tribal Lead Agency regarding occupational pesticide exposure incidents or illnesses possibly related to WPS violations or other pesticide use/misuse.
2. **Support WPS Worker & Handler Training.** States/tribes will assist with the distribution of WPS training materials and coordinate with employers and WPS training providers to assure adequate WPS training is occurring and that sufficient WPS training materials and resources are available. [**NOTE: States/Tribes should provide information to WPS covered establishments and WPS training providers on how to obtain WPS training materials from EPA's Agricultural Compliance Assistance Center (www.epa.gov/agriculture or 1-888-663-2155).**]
3. **Assure Mechanisms and Procedures are in Place to Enable Coordination and Follow-up on Reports of Occupational Pesticide Exposure, Incidents or Illnesses That May be Related to Pesticide Use/Misuse or WPS Violations.** States/tribes will assure they have mechanisms and procedures in place to enable them to coordinate and follow-up on reports of occupational pesticide exposures, incidents or illnesses that may be related to pesticide use/misuse or WPS violations. This should include:
- having mechanisms and procedures in place to field, track and follow-up on tips or complaints that come to the State/Tribal Lead Agency from the regulated or protected

community that involve alleged occupational pesticide exposures, incidents or illnesses possibly related to pesticide use/misuse or WPS violations; and

- assuring mechanisms and procedures are in place to allow for coordination and information exchange between the State/Tribal Lead Agency with state/tribal health and labor departments (or similar agencies) on occupational pesticide exposures, incidents or illnesses that may get reported to those agencies (or that they may otherwise deal with under their jurisdictional responsibilities), that may be related to pesticide use/misuse or WPS violations. ***[NOTE: At a minimum the State/Tribal Lead Agency will have a plan or strategy for developing the capacity to have such coordination and information exchange mechanisms/procedures in place with state/tribal health and labor departments (or similar agencies). The plan/strategy does not need to be a formal written document that is submitted to the Region. However, if there are no established coordination and information exchange mechanisms/procedures in place, then the state/tribe should discuss their plan/strategy for developing this capacity with the Region during grant negotiations and they should establish performance goals or objectives in the annual grant work plan for advancing their plan/strategy. Regions should work with states/tribes to assist them with this activity as needed and Regions should address state/tribal progress in this area in the annual end-of-year reviews.]***

Core Activities for C&T

1. **Assure Basic Program Implementation.** States/tribes must assure pesticide applicator certification programs are being implemented and maintained in accordance with their EPA approved certification plans to ensure the competency of certified applicators and provide for public safety, national security and protection of the environment. C&T plans and programs should be updated as needed to address current competency standards, national security concerns and emerging regulatory issues or requirements. As part of this activity, States/tribes should assure applicator exams are updated as needed to reflect changing competency and certification standards, and they should coordinate with training providers to assure applicator training materials/programs are updated as needed.
2. **Meet State/Tribal Certification Plan Requirements Using the Certification Plan and Reporting Database (CPARD) System.** States/tribes must assure their State/Tribal Plans for C&T are maintained and kept current in accordance with the requirements in 40 CFR Part 171. States/tribes should continue to use the CPARD system to keep their certification plans current. States/tribes should update their plans in CPARD annually, making any necessary updates in the database to reflect any changes to their C&T programs and plans made during the year. States/tribes should assure all pertinent information regarding any plan changes is provided. Additionally, States/tribes must use the database system for submitting their required annual C&T accomplishment reporting information. States/tribes should work with their EPA Regional Office if any technical assistance needed to assure they can access and use the CPARD system.

3. **Monitor Applicator Training for Quality Assurance.** States/tribes will monitor initial certification and recertification training programs to assure the quality and consistency of training programs, and they should participate in applicator training programs as resources permit. States/tribes will work with CES and other training providers to assure training programs are providing the information required to assure appropriate applicator knowledge and competency.
4. **Address Compliance/Enforcement Issues in C&T.** States/tribes must review their compliance monitoring and enforcement data annually to determine if there are consistent compliance problems associated with certain use patterns or the use of specific pesticides. Any such trends or problems that are identified should be addressed through applicator training programs as appropriate and noted in the annual C&T accomplishment reporting information submitted to EPA.
5. **Conduct Outreach to RUP Dealers and Affected Fumigant Users on New Soil Fumigant Labeling Requirements.** States/tribes will make information available to RUP dealers and affected fumigant users about the change in classification (to restricted use) being implemented for the soil fumigants dazomet and metam sodium/potassium. States/tribes should also make information available to affected certified applicators and fumigant users about the full range of new risk mitigation labeling requirements being implemented for the soil fumigants chloropicrin, dazomet, metam sodium/ potassium, and methyl bromide. The Agency published amended reregistration eligibility decisions (REDs) for the above soil fumigants on June 3, 2009. The RED decisions call for new risk mitigation measures for the soil fumigants to mitigate risks to fumigant applicators/handlers and post-application workers, as well as bystanders. EPA expects fumigant labels with the new RUP classification and other new label requirements implementing the risk mitigation measures will begin to appear in the field in 2010 and 2011. Ensuring RUP dealers and fumigant users are aware of, and comply with, the new label requirements is an important component of the risk mitigation package. Therefore, states/tribes must conduct outreach and education to RUP dealers and the affected user community about the new fumigant labeling requirements to ensure they understand the new restrictions on soil fumigant labels and how they will be impacted, in order to facilitate compliance. EPA will develop materials to aide these efforts such as fact sheets, standard presentations, inspector checklists, and Q&As. States/tribes should utilize these materials at outreach opportunities such as site visits, grower meetings, certified applicator mailings, and applicator training/recertification programs.

Supplemental Activities for WPS

1. **Provide Comment on Proposed Part 170 (WPS) Regulation Changes.** EPA intends to propose revisions to the Part 170 WPS regulation in early FY2011. When the proposed revisions are published, states/tribes are strongly encouraged to provide input and comments to EPA on the proposed changes to identify potential impacts or issues for their programs. Revising and improving these regulations is a high priority for OPP, and states/tribes should devote appropriate resources to review and comment on the proposed

revisions to assure any concerns or issues are identified.

2. **Support WPS Train-the-Trainer Programs.** EPA encourages states/tribes to support WPS train-the-trainer (T-t-T) programs that will improve the quality of WPS trainers and WPS training programs. In association with a cooperative agreement partner, OPP carried out a national train-the-trainer (T-t-T) pilot program that led to the development of a national model WPS T-t-T program for WPS worker training (includes national T-t-T instructor handbook and companion materials). EPA encourages states/tribes to promote and use the materials to establish WPS T-t-T programs and support existing programs.
3. **Work With Community-Based WPS Training Providers.** States/tribes should work with community-based training providers, such as AFOP/Americorp and other groups, to assure they are meeting WPS requirements and any applicable state/tribal requirements; and also to assure they appropriately linked with the members of the agricultural community so their services can be utilized more effectively.
4. **Develop Cooperative Relationships with Farmworker Service Organizations.** States/tribes should identify and work with groups that provide services to farmworkers to establish cooperative relationships and better communications and linkages with them. Establishing such relationships could result in more productive communication networks that will support the objectives of the program and promote better coordination on occupational pesticide incidents and/or WPS complaints.
5. **Support the National Strategy for Outreach to Health Care Providers.** The National Strategy for Outreach to Health Care Providers is an important component of EPA's pesticide worker safety program. It is the cornerstone of EPA's effort to improve recognition and management of pesticide poisonings by health care providers, and it is an important part of efforts to facilitate better communications regarding pesticide incidents. States/tribes should consider undertaking activities listed below to support the initiative:
 - Identify and work with health care providers, migrant clinicians, and other groups that provide health services to farmworkers in order to establish better linkages with them and build productive communication networks that will support the objectives of the program and promote better coordination on occupational pesticide incidents.
 - Distribute EPA's revised *Recognition and Management of Pesticide Poisonings* manual to health care providers, migrant clinics and other appropriate entities to help improve diagnosis and treatment of pesticide related illnesses.
 - Participate on potential projects/efforts that may arise in association with EPA's cooperative agreement activities related to its National Strategy for Outreach to Health Care Providers.

Supplemental Activities for C&T

1. **Provide Comment on Proposed Part 171 (C&T) Regulation Changes.** EPA intends to propose revisions to the Part 171 regulation in early FY2011. When the proposed revisions are published, states/tribes are strongly encouraged to provide input and comments to EPA on the proposed changes to identify potential impacts or issues for their programs. Revising and improving these regulations is a high priority for OPP, and states/tribes should devote appropriate resources to review and comment on the proposed revisions to assure any concerns or issues are identified.
2. **Promote Integrated Pest Management (IPM) in Applicator C&T Programs.** EPA encourages states/tribes to promote IPM in their pesticide applicator certification and recertification training, materials and programs to raise applicator awareness and adoption of IPM. States/tribes should consider the following activities to promote IPM: reviewing/revising initial certification programs to assure adequate coverage of IPM, reviewing/revising recertification training and programs to assure adequate coverage of IPM concepts and principles; and making IPM-related outreach and education materials and resources available to applicators (e.g., at training programs and via the web, etc.).
3. **Support Certification and Training Assessment Group (CTAG) Projects.** EPA continues to actively work on projects and activities stemming from the CTAG process and recommendations. States/tribes should keep abreast of the ongoing CTAG projects and activities and identify potential opportunities for collaboration with EPA and the CTAG. States/tribes should also provide input and comment to CTAG on CTAG issue papers and other CTAG documents. **[NOTE: States/tribes can find out about CTAG activities and opportunities for involvement by visiting the CTAG web site (<http://www.ctaginfo.org>).]**
4. **Undertake Efforts to Measure Program Outcomes.** States/tribes should consider conducting program assessments or developing program measures that help document certification program outcomes. This may include such things as developing processes to document positive behavior change as a result of training and/or certification; or developing pre- and post-test evaluations for certified applicators that may help document the increased competency that resulted from certification and training.
5. **Use Exam Development and Validation Principles.** Where resources permit, states/tribes should use exam development and validation principles to revise their applicator exams and help lead to improved competency of applicators.

Worker Safety Reporting Requirements

For FY2011-2013, each state/tribe must report annually to EPA on the items outlined below. For item number one below, states/tribes must use the Certification Plan and Reporting

Database (CPARD) system for submitting their annual C&T accomplishment reporting information to EPA. **The annual C&T accomplishment reporting information must be entered into CPARD annually by December 31st of each calendar year regardless of the actual grant project period.** By properly and completely filling out the reporting section of the CPARD system, states/tribes will provide the annual C&T accomplishment reporting information that contains all of the information required by Part 171. States and tribes should work with their EPA Regional Office to get any technical assistance needed to assure they can access and properly use the CPARD system.

1. As stipulated in 40 C.F.R. Part 171, Section 171.7(d), states/tribes are required to submit annual C&T accomplishment reporting information to EPA. The annual C&T accomplishment reporting information required includes the following:
 - The total number of private and commercial certified applicators holding a valid certification at the end of the reporting period;
 - The total number of commercial certified applicators initially certified, **by category**, during the reporting period;
 - The total number of commercial certified applicators recertified, **by category**, during the reporting period;
 - The total number of commercial certified applicators holding a valid certification, **by category**, at the end of the reporting period;
 - The number of initial certification and recertification training programs that were monitored and/or participated in by the state/tribe during the reporting period to assure the quality and consistency of applicator training programs;
 - Any changes in private or commercial categories/subcategories during the reporting period;
 - A summary of any instances where the C&T program was used to address pesticide use problems identified through analysis of compliance data or enforcement trends, or through another mechanism enforcement activities related to use of RUPs during the reporting period;
 - A description of any significant proposed changes in standards of competency;
 - A description of any proposed changes in plans and procedures for enforcement activities related to use of RUPs for the next reporting period;
 - Any proposed changes to the State Plan for C&T that would significantly affect the state/tribal C&T program.

The above C&T accomplishment reporting information will be used for general program management purposes. The C&T accomplishment reporting data is used in EPA's cooperative agreement funding formulas used for computing grant funding levels for the pesticide certification program grants and the pesticide enforcement grants. The data is also used in the funding formula for determining funding levels for the Pesticide Safety Education Program (PSEP) grant funds from EPA that are distributed to Cooperative Extension Service through the USDA for supporting certified applicator training. Additionally, the data is often requested and cited by industry, Congress, USDA and

other program stakeholders throughout the year.

2. States/tribes are to annually report on any new or revised pesticide applicator certification and training materials the state/tribe or its partners developed during the year. This would include new/revised core or category manuals, new/revised exams or exam blueprints; and/or new web-based training materials or programs, etc. If applicable, states/tribes are to provide information about these materials to EPA through the national C&T resources website maintained by WSU (<http://pep.wsu.edu/psp/scripts/menu.asp>). States/tribes should contact their EPA Regional Office C&T program contact if they need any assistance in using the national C&T resources website. The above reporting information on C&T materials is for general program management purposes. It is not used directly as a program outcome measure or indicator.

Worker Safety Program Performance Measures and Indicators

OPP's Pesticide Worker Safety Program, and the activities described in this worker safety program guidance, support accomplishment of the Agency's Goal 4, objective 4.1, sub-objective 4.1.3, and the associated strategic targets from the Agency's 2009-2014 Strategic Plan Change Document.

GOAL 4: HEALTHY COMMUNITIES AND ECOSYSTEMS

Protect, sustain, or restore the health of people, communities, and ecosystems using integrated and comprehensive approaches and partnerships.

Objective 4.1 Chemical and Pesticide Risks: By 2014, prevent and reduce pesticide and industrial chemical risks to humans, communities, and ecosystems.

Strategic Plan Targets

The Pesticide Worker Safety Programs support will primarily support the Agency Strategic Plan:

- Sub-objective 4.1.3: Protect Human Health from Pesticide Risk. Through 2014, protect human health by implementing our statutes and taking regulatory actions to ensure pesticides continue to be safe and available when used in accordance with the label.
 - Through 2014, reduce and maintain the concentration of pesticides detected in the general population by 50% percent. (Based on urinary metabolites reported 1999-2002 Centers for Disease Control's National Health and Nutrition Examination Survey (NHANES). Measure is based on NHANES 50th percentile concentrations for all (seven) organophosphate analytes reported: Dimethylphosphate < 0.58 ug/L; Dimethylthiophosphate = 1.06 ug/L; Dimethyldithiophosphate < 0.10 ug/L; Diethylphosphate = 0.78 ug/L; Diethylthiophosphate = 0.5 ug/L; Diethyldithiophosphate < 0.10 ug/L; and 3,5,6-Trichloro-2-pyridinol = 1.9 ug/L .)

- By 2014, improve the health of those who work in or around pesticides by reducing the number of moderate to severe occupational incidents for six acutely toxic pesticides with the highest number of incidents by 50%. (Based on the approximately 325 moderate and severe incidents reported to the Poison Control Center (PCC) National Poison Data System (NPDS) 1999-2003. for the six pesticides of concern; chlorpyrifos, diazinon, malathion, pyrethrins, 2,4D, and carbofuron.)

The worker safety program activities listed and described in this guidance are intended to contribute to accomplishment of EPA's desired program outcomes for worker safety (e.g., applicator competence, reduced worker and applicator incidents, increased awareness of WPS provisions, improved worker safety, etc.) and the specific strategic targets listed above. However, at this time EPA will not rely on cooperative agreement reporting information as the source of data for supporting our program measures for worker safety. In order to reduce reporting burdens on states/tribes and because of limitations with the existing data sources currently available from states/tribes and the cost to address these problems, the data and information used to support EPA's strategic targets and the worker safety program measures listed below will be derived from other sources of data and information. The worker safety cooperative agreement reporting information required as part of this guidance will be used to support other program management and regulatory decisions. More information about the data sources that will be used to support the specific strategic targets listed above can be found in the Agency's 2009-2014 Strategic Plan on EPA's website (<http://www.epa.gov/ocfo/plan/plan.htm>).

2.2.2.2 Pesticides in Water

The goal of the Pesticides in Water Program is to insure that pesticides do not adversely affect the nation's water resources. Reducing the concentration of pesticides in urban and agricultural watersheds are strategic targets in the Agency Strategic Plan under the Sub-objective 4.1.4: Protect the Environment from Pesticide Risk. EPA's goal under this sub-objective is to protect the environment by implementing our statutes and taking regulatory actions to ensure pesticides continue to be safe and available when used in accordance with the label. The specific strategic targets listed in the Agency Strategic Plan and additional performance measures are listed under the "*Pesticide in Water Program Performance Measures and Indicators*" section of this guidance.

Core and supplemental activities supporting the Pesticides in Water Program should be described in the Cooperative Agreement Workplan, or referenced document (such as a Pesticide Management Plan (PMP)).

Core Activities for the Pesticides in Water Program

In order to meet the strategic targets and other performance measures and indicators listed, State and Tribal pesticide lead agencies are expected to use Pesticides in Water funds to develop and carry out management programs to protect ground and surface water resources from pesticide risks. Funds are to be used to:

1. Evaluate *Pesticides of Interest** over time.
2. Take actions (actively manage beyond the label) to reduce or prevent contamination from *pesticides of concern** over time.
3. *Demonstrate the progress** of the management strategy in reducing or maintaining concentrations below *reference points*.*

* These terms are more fully explained below

States and Tribes are expected to investigate and respond to water resource contamination by pesticides, especially where water quality standards or other reference points are threatened. Where appropriate, States and Tribes are encouraged to consult with or coordinate prevention and protection of water resources with other agencies with responsibilities for water resource protection.

Activities to Support Implementation of Pesticide National Pollutant Discharge Elimination System (NPDES) permits

Under the current schedule, people who apply pesticide products to; a) control of mosquitoes and other aquatic insect species, b) control of aquatic weeds or algae, c) wide-area pest control and control of vegetation along ditchbanks, and d) control of aquatic animal pests, will be required to operate under an NPDES permit after April 2011. While the EPA Office of Water and the State Water Agencies will have the lead in developing, implementing and providing outreach on these new pesticide NPDES permits, we expect state and tribal Pesticide Lead Agencies may become involved in this effort. Where appropriate, state/tribal activities to support the implementation of Pesticide NPDES permits issued under the Clean Water Act (CWA) may be included in workplan and funded with pesticide program grants. These activities may include offering technical assistance to review draft and final permits ((e.g., providing information on issues related to pesticide use, impacts and/or best management practices), or outreach and distribution of materials provided by EPA or the State/Tribal Water Agencies to educate pesticide users who may fall under the new permits and requirements. For FY 2011 and 2012, for states/tribes that will need a heavy investment in this area, the Region may allow a significant reduction in activities and outputs in the cooperative agreement workplans related to the three-tier approach for managing pesticides in water described below.

Step 1: Pesticides of Interest Evaluated to Identify Pesticides of Concern

States/Tribes must conduct an evaluation of all *pesticides of interest* to determine whether a human health or environmental *reference point* is *likely* to be approached or exceeded in localized areas of a State or Tribe, and the pesticide should be elevated to a *pesticide of concern*. Pesticides that are determined to be a pesticide of concern will need to be managed by the state or tribe as described in Step 3 below.

Pesticides of interest are those pesticides that have been identified by the States in the survey conducted by SFIREG in 2005 (Appendix 10), plus any others that are the cause of water quality impairments under CWA §303(d), plus any other pesticides a State or Tribe wishes to add. Pesticides of interest are those pesticides that have the *potential* to occur in ground or surface water at concentrations approaching or exceeding a human health or ecological ***reference point***. A pesticide of interest could be an active ingredient alone or the active ingredient collectively with degradates of toxicological concern. The ***reference point*** is the concentration of a pesticide active ingredient in water used to judge the severity of contamination. It may be based on a Maximum Contaminant Level (MCL), drinking water health advisory, surface or ground water quality standard (which can address human or aquatic life toxicity), EPA reference dose, EPA drinking water level of concern, or another benchmark that the State or Tribe adopts by regulation or policy.

In most cases, evaluations of pesticides of interest can be based on available monitoring data from within and State or Tribe. An evaluation may also be based on the pesticide's environmental fate and use patterns, performance in the field, available prospective monitoring studies, peer-reviewed scientific literature, or monitoring results and experience from other States or Tribes with comparable conditions.

In reviewing the list of pesticides of interest, if States or Tribes believe there is no reasonable exposure expected (due to factors such as soil type, use pattern, or volume of use), this will be considered having conducted an evaluation. The pesticide would not need to be elevated to a pesticide of concern, and no further management will be required. If a State or Tribe previously conducted an evaluation of a pesticide of interest prior to this guidance, this will also be considered having completed an evaluation.

An evaluation is considered complete once the grantee makes a conclusion that the pesticide of interest is or is not likely to approach or exceed a human health or environmental reference point in localized areas of a State or Tribe, and therefore whether the pesticide should be elevated to a pesticide of concern and managed. For purposes of the performance measures described in the sections below, a pesticide can only be counted as "evaluated" once. However, grantees should re-evaluate the pesticide if there is new information, new use patterns, or increased risk of exposure for the pesticide. Typically, regions do not need to negotiate specific commitments in the workplans for re-evaluations. However, re-evaluations should be reported by the grantee as described in the section below entitled, *Pesticides in Water Program – Reporting Requirements*.

After evaluation, if the State or Tribe finds the pesticide that is the cause of a water quality impairment under CWA §303(d) is not of concern, this information should be shared with the State water agency with responsibility for managing the list. Any data sets or technical reports used in support of the listing decision or which may be of value in delisting the pesticide input should be shared with the Office of Pesticide Programs for consideration in the registration review process. A list of active ingredients that are scheduled for registration review can be viewed at: http://www.epa.gov/oppsrrd1/registration_review/schedule.htm and is

attached as Appendix 8.

Over time, EPA will be looking for states and tribes to evaluate 100% of the *pesticides of interest*. States and Tribes will negotiate the schedule of evaluations (e.g., 5-10 years) with the Regions to reflect differences in their capabilities, available information, program authorities, and resources that can be applied.

Step 2: Pesticides of Concern Managed

Pesticides that are identified as a concern from Step 1 must be managed. At the state or Tribal level, a pesticide is actively “managed” when activities are carried out to prevent or reduce contamination of water by a particular active ingredient so that it is prevented from reaching the water quality standard or other reference point, or brought below the reference point. Where appropriate, States and Tribes are encouraged to consult with or coordinate prevention and protection of water resources with other agencies with responsibilities for water resource protection.

At the state and tribal level, a pesticide is *actively* managed when preventive activities are engaged to reduce contamination of water by a particular active ingredient. The following examples of active management were identified by the EPA/state work group that developed the national pesticide water quality measures in 2005. They are not meant to be inclusive and Regions can negotiate other activities with states and tribes to manage pesticides of concern:

- Applicator or user education, hands-on training, or public outreach on practices that minimize the amount of the pesticides of concern that enter water.
- Water quality assessment to identify vulnerable water resources and conducting outreach to applicators and growers on locally-specific management practices that should be taken to protect water quality in these sensitive areas.
- Promotion and adoption of voluntary BMPs judged to prevent or reduce contamination by a particular pesticide e.g., riparian buffer zones, filter strips, no-till cultivation.
- Management control decisions based on spatially and temporally focused surveillance monitoring.
- Targeted inspections and enforcement of existing water quality-related label restrictions and cancellation notices.
- Designation as State or Tribal “Restricted Use” due to water quality concerns.
- Imposition of other use or label restrictions designed to reduce contamination of a pesticide.
- Denial of State registration due to water quality concerns.
- Activities specific to assessing and addressing CWA § 303(d) “impaired waters.”
- Activities specific to assessing and addressing urban and agricultural watersheds that exceed USGS NAWQA benchmarks for pesticides in EPA’s strategic plan sub-objective 4.1.1.

The schedule and priority of which pesticides need further management is a state or tribal decision, based on available resources, to be negotiated with the Region. Overtime, EPA will be looking for 100% of *pesticides of concern* to be managed.

Step 3: Demonstrated Progress

Overtime, states and tribes should be able to demonstrate that the steps they have taken to manage a pesticide of concern have been successful at keeping (or returning) pesticide concentrations in water to below a reference point, or that they can certify widespread adoption of control measures. Progress toward reduction or maintenance of concentrations below the reference point could be demonstrated by:

- Targeted monitoring of water samples from vulnerable use areas that determines that mitigation measures are preventing residue levels from approaching or exceeded a reference point.
- Downward trends in concentration levels established by monitoring data in geographic areas where the pesticide of concern is being used (data from USGS, registrant, USDA, or other sources).
- The results of targeted surveys or inspections that document the wide adoption of voluntary or regulatory measures which have been proven via research to protect water quality.

Pesticides in Water Program – Supplemental Activities

After meeting the “core activities,” states/tribes are encouraged to devote cooperative agreement resources to the following supplemental activities.

1. States and tribes are encouraged to conduct water quality monitoring to assess the potential for contamination, the extent and magnitude of contamination, or the success of management actions. Monitoring activities should be coordinated with other state and tribal agencies with responsibilities for the conservation and protection of water resources, and explained in the program description or work plan. If cooperative agreement funds are used for water quality monitoring, a report is required to be submitted to EPA. Please refer to “Reporting Requirements” below.
2. Other activities that advance the programmatic goal of developing and carrying out programs to protect water resources from pesticide risks can be negotiated with the Regional office. This could include ‘clean sweep’ programs aimed at unused pesticide collection and proper disposal to manage specific pesticides of concern.

Pesticides in Water Program – Reporting Requirements

Pesticide lead agencies must report on activities conducted under the Cooperative Agreement related to the Pesticides in Water Program.

Pesticide lead agencies must report in the Pesticides of Interest Tracking System (POINTS), the national water quality measures listed in the section below entitled, Pesticides in Water Program Performance Measures and Indicators. POINTS can be found at <http://points.wsu.edu>. If available, states should also submit any data sets from monitoring acquired during the grant year. **All states and tribes must submit the measures data by December 31st of each grant year regardless of the actual grant period, including any available new information from monitoring.** In addition to the data sets themselves, sStates and tribes are encouraged to cite other studies, reports, or information on WQ monitoring and results to improve or upgrade baseline data on pesticide effects on human health and the environment.

From the POINTS system data, OPP expects to be able to:

- Determine how pesticides of interest were evaluated.
- Identify pesticides of concern (pesticides States and Tribes conclude approach or exceed reference points).
- Identify pesticides of concern that are being actively managed by States and Tribes, and which may need more effective management at the national level e.g., label changes, special studies.
- Identify pesticides for which national water quality standards, aquatic life criteria, or other national regulatory standards or reference points are needed.

- Demonstrate that state and tribal water quality management programs are effective at reducing pesticide risks to water quality *locally*.
- Identify states in which the FIFRA lead agency is using its resources to address pesticide impaired waters under CWA §303(d).

EPA encourages states and tribes to submit (using POINTS, or directly to OPP) other, high quality monitoring results (or their literature citations or web addresses) to EPA regardless of the funding source. EPA access to this information will further inform and influence its risk assessment and risk management process, and may lead to better registration decisions to protect human health and the environment. It will also help the national program refine its measures of success for field program activities.

Any monitoring data sets need to be provided in electronic format i.e., a readable database format that is easy to import into a spreadsheet, and forwarded directly to EPA HQ, Government & International Services Branch. Water monitoring data should *at least* include the following fields to be useful for risk assessment purposes:

- Location (latitude & longitude, if possible, or other reliable location information)
- Water body type (stream, river or other flowing body; lake, reservoir, or other static body; ground water)
- Date sampled (month/day/year)
- Chemical analyzed, detection limit, and reported concentration.

Appendix 9 includes additional considerations for providing water quality monitoring data and data sets to OPP. Regional offices may require additional reports to address specific cooperative agreement work items.

Pesticides in Water Program Performance Measures and Indicators

Strategic Plan Target

- Sub-objective 4.1.4: Protect the Environment from Pesticide Risk. Through 2014, protect the environment by implementing our statutes and taking regulatory actions to ensure pesticides continue to be safe and available when used in accordance with the label.
 - By 2014, no urban watersheds will exceed the National Pesticide Program aquatic life benchmarks for four key pesticides of concern. Baseline; (1992 – 2001) percent of urban watersheds sampled by USGS National Water Quality Assessment (NAWQA) program that exceed the National Pesticide Program aquatic life benchmarks for diazinon (73%), chlorpyrifos (37%), carbaryl (13%), and malathion (30%.)
 - By 2014, no agricultural watersheds will exceed the National pesticide Program aquatic life benchmarks for two key pesticides of concern. Baseline data (1992 –

2001) percent of agricultural watersheds sampled by USGS National Water Quality Assessment (NAWQA) program that exceed the National Pesticide Program aquatic life benchmarks for azinphos-methyl(18%) and chlorpyrifos (21%.)

Three-Step Pesticides in Water Program Measure

In addition to the Strategic Targets previously listed, the three-tiered approach listed below will also be used to measure the performance of the National Pesticides in Water Program. This approach is designed to measure the pesticide lead agency's progress in: 1) identifying *pesticides of concern* by evaluating a list of *pesticides of interest* that may have the potential to threaten water quality locally; 2) taking actions to manage *pesticides of concern*; and 3) examining trend data to demonstrate improvement in water quality. The outcomes of these measures may be viewed as:

1. Evaluate pesticides to determine if they are *pesticides of concern*
 - Short-term (change in knowledge)
2. Take actions to reduce/prevent pesticide contamination
 - Intermediate-term (change in behavior)
3. Demonstrate Progress
 - Long-term (change in condition)

Step 1: Pesticides of Interest Evaluated to Identify Pesticides of Concern

Over time, EPA will be looking for states and tribes to evaluate 100% of the *pesticides of interest*. The metric is:

$$\frac{\text{Evaluated pesticides of interest}}{\text{Number of pesticides of interest}} \times 100$$

Please note that a pesticide can only be evaluated once. Once the grantee has made a conclusion that a pesticide of interest is or is not likely to approach or exceed a human health or environmental reference point in localized areas of a State or Tribe, and therefore whether the pesticide should be elevated to a pesticide of concern and managed, the pesticide is considered to be evaluated.

Pesticides should be re-evaluated where new information, new use patterns, or increased risk of exposure are indicated. Typically, regions do not need to negotiate specific commitments in the workplans for re-evaluations. However, grantees should report all re-evaluations through POINTS so they may be given credit for this work. A grantee may report a re-evaluation in POINTS when they have considered the new information and documented a new conclusion as to whether there are concerns locally that pesticide levels are approaching or exceeding a reference point.

Step 2: Pesticides of Concern Managed

The second measure is aimed at quantifying state and tribal efforts to manage pesticides of concern (those pesticides that have been identified as posing a significant risk of contamination from the state or tribal evaluation of its list of pesticides of interest). The schedule and priority of which pesticides need further management is a state or tribal decision to be negotiated with the Region. Over time, EPA will be looking for 100% of *pesticides of concern* to be managed. The metric is:

$$\frac{\text{Number of pesticides of concern managed}}{\text{Number of pesticides of concern identified}} \times 100$$

From the evaluation of available information in Step 1, some pesticides of interest may be found to pose a particular concern for water quality in geographically sensitive areas. The number of such “pesticides of concern” is identified for the denominator. The numerator identifies the number of these pesticides that are actually managed. At the state or tribal level, a pesticide is actively “managed” when activities are carried out to prevent or reduce contamination of water by a particular active ingredient so that it is prevented from reaching the water quality standard or other reference point, or brought below the reference point.

Step 3: Demonstrated Progress

The third measure is aimed at quantifying the number of pesticides for which some form of management has *demonstrated progress* toward keeping (or returning) pesticide concentrations in water to below a reference point. The metric is:

$$\frac{\text{Number of pesticides of concern managed for which there is demonstrated progress toward reduction or maintenance of concentrations below the Reference Point}}{\text{Number of pesticides of concern managed}} \times 100$$

Another way to demonstrate success of the three-tier approach to pesticides in water is that the state/tribe has managed the pesticide of concern so well that it is no longer a pesticide of concern. That is, the levels of the pesticide in local water resources are no longer approaching or exceeding the reference point because of cancellation, restriction, or another effective management strategy. Therefore, states and tribes must now report in POINTS the number of pesticides of concern that have been managed and after re-evaluation, are no longer considered a pesticide of concern for their state or tribe. This measure is merely a reporting measure and another means to demonstrate progress. Grantees will not be expected to make commitments on this measure and EPA will not set any targets.

EPA’s Pesticide Impairment Water Quality Measure

EPA’s Office of Water (OW) has established an EPA strategic target to improve water quality on a watershed basis (sub-objective 2.2.1) under Goal 2, Clean and Safe Water.

Pesticide lead agencies can help EPA achieve success in this measure by consulting with and coordinating their field programs with State water agencies, where possible, to help validate listing decisions due to specific, currently registered pesticides and/or by managing specific pesticides to mitigate the cause of impairment.

Activities to Support Implementation of Pesticide National Pollutant Discharge Elimination System (NPDES) permits

States/tribes should report on activities conducted under the workplan to support the implementation of Pesticide NPDES permits. For FY2011 and 2012, where regions and the grantee have agreed to a heavy investment in this area, it will be appropriate to significantly reduce performance expectations for activities related to the three-tier approach for managing pesticides in water described above.

2.2.2.3 Endangered Species Protection Program

Through risk assessment and mitigation, OPP's goal under the Endangered Species Protection Program (ESPP) is to limit any potential effects from pesticide use to federally listed threatened or endangered species, while at the same time, placing no undue burden on agriculture or other pesticide users.

This Endangered Species Protection Program will support the Agency Strategic Plan:

- Sub-objective 4.1.4: Protect the Environment from Pesticide Risk. Through 2014, protect the environment by implementing our statutes and taking regulatory actions to ensure pesticides continue to be safe and available when used in accordance with the label.

Following finalization of the enforceable field program in FY2006, the focus of the Program has been primarily to educate pesticide users about the ESPP. States and tribes (grantees) have provided pesticide users with a considerable amount of information on the provisions of the ESPP. However, endangered species bulletins have not been developed as rapidly as originally expected. New information on the Endangered Species Program may be limited and additional outreach and education activities may not be necessary in all states.

Because of competing priorities and because there are so few endangered species bulletins in place or being developed in the next few years, field program work to support the Endangered Species Pesticide Protection Program is not considered a priority or "core" work for FY2011-2013. If the Region and grantee agree that endangered species issues are not a priority relative to the other pesticide program issues being addressed by the state or tribe (e.g., worker safety {including soil fumigation outreach}, pesticides in water {including support for NPDES pesticide permit outreach}, and container/containment), the region and the grantee may agree not to include any endangered species activities in the workplan. Further, the region and grantee may agree that funds designated for activities to support pesticides endangered species work may be temporarily used to meet those other pesticide program priorities. However, as new

Endangered Species Protection Bulletins are developed, states and tribes affected by the bulletins may need to perform activities related to the Bulletins.

Grantees wishing to use funds to support the endangered species protection program may choose from the activities below.

Activities to Support the Endangered Species Protection Program

The following is a list of activities from which the grantees can choose to support the ESPP. A grantee can choose to do one or more of the activities or to do part of an activity, in accord with the level of resources and expertise available in their state or tribal area.

1. Outreach and Education

During the term of this grant guidance, states and tribes can educate current and potential pesticide users and pesticide inspectors about the ESPP. Activities are to continue, as appropriate, throughout the term of this guidance. Topics that should be covered include field implementation aspects of the Program as described in the Federal Register notice (70 FR 66392, Nov. 2, 2005).

For pesticide users, the topics could include:

- the generic endangered species label statement referring pesticide users to Bulletins;
- how to find a Bulletin, including the use of OPP's dedicated web site, Bulletins Live;
- what a Bulletin is, what it conveys and how to use it; and
- information about inspections and enforcement per the OECA grant guidance (e.g., Bulletins are part of the label and will be enforced under FIFRA through routine pesticide use inspections).

For pesticide inspectors, the topics could include:

- how to read Bulletins;
- how to access historic Bulletins for purposes of inspections;
- familiarity with local Bulletins and the species addressed in them; and
- the goals of the Program; i.e., to protect listed species from possible harm due to pesticide use, while at the same time, not placing unnecessary burden on agriculture or other pesticide users.

In the event that no Bulletins are available for a particular area, education efforts could focus on one or more of the following:

- habitat protection training sessions for pesticide applicators, inspectors and others who must follow the provisions of the program.
- concepts and benefits of integrated pest management (IPM)

- ways to reduce pesticide spray drift and pesticide runoff to avoid exposure to endangered species

1. Risk Assessment and Risk Mitigation Support

Support provided by the states can be in response to litigation, registration review or other registration activities

Activities may include:

- providing information such as crop data, pesticide use data, and species location data to OPP for use in listed species-specific risk assessments for upcoming registration review cases. These cases may be identified on EPA's website at http://www.epa.gov/oppsrd1/registration_review/schedule.htm. A registration review docket is opened and a work plan developed for each pesticide case. The work plans articulate data EPA believes it needs and discusses the assessments that will be conducted and the time frames for those assessments. OPP would find it most useful for grantees to provide any relevant endangered species information they may have 18 months prior to the projected date for completing a risk assessment.
- commenting on exposure assumptions used in risk assessments
- commenting on the feasibility of proposed, listed species-specific mitigation measures during OPP's standard processes of registration and registration review
- reviewing draft Bulletins, should any be developed in a state's area

3. Establish and maintain relationships with local and regional fish and wildlife agencies.

Activities may include:

- providing draft Sec. 18 and 24(c) submittals for review and comments
- evaluating site-specific listed species/pesticide concerns (i.e. water sampling)
- collaborating on certification & training presentations and workshops
- developing joint outreach materials

4. Work with Certification and Training Staff and Cooperative Extension Services to provide endangered species information for Pesticide Applicator Training.

Work with Certification and Training Staff and Cooperative Extension Services to provide endangered species information for Pesticide Applicator Training.

Activities may include:

- incorporating endangered species information such as Bulletins and the whereabouts of listed species into certification and training. This activity will help keep state staff up to date on the progress of EPA's Endangered Species Program.

Supplemental Activities

1. Special projects

Completion of a special project should be considered supplemental. Some special projects may not fulfill requirements of the Endangered Species Act relative to a pesticide regulation and thus may not take the place of activities listed above.

Activities may include such projects as listed below or other similar types of projects:

- mapping projects to protect species during pesticide applications (e.g. bald and golden eagle nesting sites in areas where there are aerial applications of pesticides for gypsy moth control)
- work with landowners to undertake projects on their own land, such as "hot fences" to keep cattle out during critical stages of species development or on a broader level, getting state and federal agencies to work together with private parties.
- if the state does not have a specialist knowledgeable about endangered species, working with other agencies, or graduate students on projects and scheduling training sessions for field staff with the agencies.

Reporting Requirements

Pesticide lead agencies must report to their EPA regional office on activities conducted under the cooperative agreement related to endangered species using the year-end electronic reporting form in Appendix 11 and the Endangered Species Inspection Report in Appendix 12 as stipulated in the corresponding OECA guidance.

Regional offices may require additional reports to address specific cooperative agreement work items.

Endangered Species Protection Program Performance Measures and Indicators

To determine the effectiveness of communications, outreach and educational activities for pesticide users, OPP will use compliance information collected by OECA's cooperative agreement reporting requirements. No further reporting or action is necessary by states or tribes in this regard; OPP would determine this by using the following formula:

Yearly percent of inspections where endangered species requirements were in place and followed = $(a-x)/a$, where

- a is the number of use and for cause inspections where it could be determined that the pesticide product was labeled requiring the applicator to follow the pesticide use

limitations and any applicable Endangered Species Protection Bulletins; and

- x is the number of use and for cause inspections where the pesticide applicator was alleged to be in violation of the Endangered Species labeling requirements, including any applicable Endangered Species Protection Bulletins.

2.2.2.4 Pesticide Container and Containment Regulations

The Container-Containment Rule Implementation will primarily support the Agency Strategic Plan:

- Sub-objective 4.1.3: Protect Human Health from Pesticide Risk. Through 2014, protect human health by implementing our statutes and taking regulatory actions to ensure pesticides continue to be safe and available when used in accordance with the label.
- Sub-objective 4.1.4: Protect the Environment from Pesticide Risk. Through 2014, protect the environment by implementing our statutes and taking regulatory actions to ensure pesticides continue to be safe and available when used in accordance with the label.

EPA published a final rule on Standards for Pesticide Containers and Containment Structures on August 16, 2006 and amended the rule on October 29, 2008. Compliance dates are:

- August 17, 2009 for containment structures for retailers, commercial applicators and custom blenders of agricultural pesticides and nonrefillable container design requirements for registrants;
- August 17, 2010 for container labeling requirements for registrants (and pesticide users once the new instructions are on labels); and
- August 17, 2011 for refillable container and repackaging requirements for registrants and refillers.

Following are activities related to this rule that States should conduct during FY2011 - 2013. In addition, States and Tribes should be carrying out the compliance and inspection activities identified in section 3.1.3 of this guidance.

1. Implementation Program

States and tribes should continue to develop and should put in place a program to implement the pesticide container and containment regulations. In particular, it is anticipated that States and Tribes will be active in implementing the containment, refillable container, and repackaging requirements as well as the revised container handling and cleaning instructions on pesticide labels. Therefore, the state and tribal implementation programs should cover at least those sections of the container and containment regulations. (The implementation programs may also include the nonrefillable container requirements and ensuring that registrants add the

required instructions to their labels, although EPA HQ will have the lead on implementing these parts of the regulations.) The implementation program should include such things as outreach and education materials, the identification of existing networks for facilitating outreach and information exchange, the identification of affected facilities and ideas and opportunities for outreach activities. Some specific suggested (not required) steps are listed below:

- Identify roles/responsibilities in and across departments;
- Identify the regulated community;
- Develop strategy for outreach and compliance assistance;
- Consider development of a data base for facility contact and demographic information;
- Assess available field resources, training needs, logistical support;
- Obtain or conduct training for staff;
- Conduct field training for inspectors;
- Develop enforcement strategy.

EPA Headquarters will provide factsheets, standard presentations, a compliance checklist and Qs&As. Outreach efforts should focus on providing information to businesses under the scope of the regulation to ensure that they are aware of the requirements and to facilitate compliance.

2. Changes to State Regulations and Tribal Codes

States that are changing their state regulations and tribes that are changing their Tribal code to implement the container and containment regulations should keep EPA HQ and Regions informed as described below.

- a. States with Equivalent Containment Regulations. (Compliance date 8/17/2009) As required in 40 CFR 165.97(d), the 21 states determined to have state pesticide containment regulations that are equivalent to the federal containment regulations must notify EPA within six months of any revision to the state's containment regulations by sending a letter to the director of EPA's Office of Pesticide Programs. This includes the states that are making changes to their state pesticide containment requirements to achieve a level of equivalency.
- b. States and Tribes that are Implementing the Federal Containment Regulations. (Compliance date 8/17/2009) States and tribes that are adopting the federal regulations by reference into their state regulations or tribal code or that are drafting state or tribal pesticide containment requirements should keep EPA HQ and Regions informed of their plans and progress.
- c. Residue Removal Compliance Programs under FIFRA section 19(f)(2). (Compliance date 8/17/2010 for the residue removal requirements in the label regulations and 8/17/2011 for the residue removal requirements in the repackaging regulations) States that are revising state regulations or statutes to establish a program that is adequate to ensure compliance with the residue removal requirements under FIFRA section 19(f)(2) should keep the EPA Region informed of their plans and progress. This only applies to

states that must make changes according to the 2008 letters from EPA regions about whether the state has an adequate program to ensure compliance with the residue removal requirements.

2.2.3 Additional Program Activities

If the state/tribe agrees to meet the level of attainment or has already reached the level of attainment for each of the four specific program areas above, the state/tribe also may propose additional activities that they will undertake. Each specific activity proposal should encompass the following elements:

- Description of activity
- Cost of activity
- A schedule for completion of the activity with milestones
- An explanation of how the activity advances the Pesticide Management Goal
- Measures that will be used to evaluate the success of the activity in advancing the *Pesticide Management Goal*

Further, states/tribes may work with the regional office to accommodate the need for unforeseen activities and requests that are an inherent part of any pesticide management program. If this situation is acknowledged through the cooperative agreement, only the label “pesticide management program maintenance” need be included rather than the specific information noted above for *Specific Activities*. Appendix 1 contains a simple example of how a state/tribe might approach applying for funds to carry out specific additional program activities. An example of additional program activities follows.

2.2.4 National Pesticide Program Strategic Plan Targets

EPA’s *Strategic Plan* serves as the Agency’s road map and guides us in establishing the annual goals we need to meet along the way. It helps us measure how far we have come toward achieving our strategic goals and recognize where we need to adjust our approaches and programs to achieve better results. Finally, it provides a basis from which EPA’s managers can focus on the highest priority environmental issues and can ensure that we use taxpayer dollars effectively.

Developing the 2009-2014 EPA Strategic Plan & Change Document

EPA’S 2009-2014 STRATEGIC PLAN UPDATE PROCESS

The Government Performance and Results Act of 1993 (GPRA) requires federal departments and agencies to update their strategic plans every three years. Pursuant to this requirement, EPA was scheduled to deliver a final *2009-2014 Strategic Plan* revision to the

Congress and to the Office of Management and Budget by September 30, 2009; however, this process has now been delayed to allow additional time for review by the Agency's new leadership.

As in prior EPA *Strategic Plans*, the 2009-2014 update provides a framework for Agency annual planning, budgeting, and accountability by identifying the measurable environmental and human health outcomes the public can expect over the next five years and describing how we intend to achieve those results.

OVERVIEW OF 2009-2014 STRATEGIC PLAN CHANGE DOCUMENT

In response to recommendations from EPA's partners and stakeholders, the Agency developed this *Change Document* to provide a better context for proposed updates in the strategic performance measurement framework—the Agency's long-term goals, objectives, sub-objectives, and strategic measures.

The strategic targets included in the 2009-2014 Strategic Plan Change Document to demonstrate protection of human health from pesticides are: a reduction in the concentrations of key pesticides in the general public; maintaining an extremely low rate of incidents from occupational exposure to pesticides; and a reduction in occupational incidents involving 6 of the most acutely toxic agricultural pesticides. The Strategic Plan targets for the “protect the environment from pesticides” area deal with reducing the number of urban and agricultural watersheds that exceed National Pesticide Program aquatic life benchmarks for several key pesticides. OPP will demonstrate the value from pesticide availability - OPP's licensing efforts by tracking the crop loss avoided resulting from the issuance of emergency exemptions (section 18s), and the termite structural damage avoided due to the licensing of safe and effective termite treatments.

Behind each of these strategic targets are numerous outcome, output and efficiency measures that provide more in-depth information on the performance of OPP and our partners. For example, the efforts of our partners in carrying out the worker protection, and certification and training programs and implementation of the container/containment rule are invaluable in supporting the “protect human health” strategic measures. Similarly, work done by OPP's partners in the area of pesticides in water and implementation of the container/containment rule contributes to the reduction of pesticides in urban and aquatic watersheds. In addition, the work of OPP's partners in the area of endangered species provides another dimension to the “protect the environment” mission area. The core activities listed in this guidance are intended to maximize our success with the performance measures listed in the tables below.

SECTION 3: FY2011-2013 APPROACH TO PESTICIDE OECA ENFORCEMENT PROGRAM STATE/TRIBAL COOPERATIVE AGREEMENTS

Guidance for developing cooperative agreement work plans for pesticide compliance/enforcement activities for FY2011-2013 is provided in this section. Regions and states and tribes should negotiate cooperative agreements that address the national priorities as appropriate for each state/tribe, as well as specific Regional and state/territorial/tribal priorities.

For tribes that cannot sustain a full compliance and enforcement program on their own, an option is to collaborate with other tribes and utilize a circuit rider inspectional program to attain a broader compliance and enforcement program.

Updated national priorities for state and tribal pesticide compliance and enforcement cooperative agreement activities are discussed below. These should be considered when negotiating cooperative agreements. Activities to support these program areas are described within this document. Commitment by applicants to conduct the specified activities described below should be explicitly stated in their work plans. Grantees are reminded to respect jurisdictional boundaries and cooperate in situations that cross jurisdictional lines.

We recommend that applicants also refer to the National FIFRA Enforcement Response Policy and the FIFRA Worker Protection Standard Penalty Policy, available at: <http://cfpub.epa.gov/compliance/resources/policies/civil/fifra> while drafting their proposals.

3.1 Compliance—Enforcement Core Priorities

EPA's Strategic Plan Goal 5.1 is to achieve environmental protection through improved compliance with environmental laws and regulations. The Agency works to ensure that government, business and the public comply with federal laws and regulations to protect the environment and human health. Effective compliance assistance and strong, consistent enforcement are critical to achieving the human health and environmental benefits expected from our environmental laws.

The pesticide compliance and enforcement activities grantees perform help identify, correct, and deter noncompliance and reduce environmental risks. Compliance monitoring activities help support other Agency goals including reducing chemical risks and protecting underserved and vulnerable populations.

EPA is taking a new approach to its priorities during this grant cycle. EPA has selected two overarching priorities—Reducing Chemical Risks and Protecting the Under Served and Vulnerable Populations—with several listed activities under each. Each area is briefly described and has several listed activities under each. Grantees should agree in their work plan to conduct inspections and perform related compliance and enforcement activities under at least one of the listed activities for each priority. The appropriate number of inspections and mix of activities is to be negotiated between grantees and their EPA regional office.

3.1.1 Priority 1: Reducing Chemical Risks

Preventing and reducing pesticide risks has been and continues to be an Agency priority. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) mandates that EPA balance the risks and benefits of pesticide use. EPA achieves this balance by partnering with states and tribes to implement FIFRA and its companion regulations as well as verify compliance with these regulations. Together, we take appropriate regulatory actions to ensure the benefits of pesticides can be realized while protecting human health and the environment from unreasonable adverse effects. The level of risk mitigation required to accomplish this goal is achieved, in part, through compliance and enforcement activities that deter unlawful pesticide production, distribution, sale or use.

The following list of activities provides opportunities for site specific approaches to reducing pesticide risk within the broader context of the Agency's goal of reducing chemical risk. Grantees should agree in their work plan to conduct inspections and take appropriate enforcement actions and/or perform related compliance assistance focusing on at least one of the listed activities. Regions and grantees should negotiate the appropriate number of inspections and mix of activities (i.e., training, technical assistance, etc.). Within the activities listed below, states and tribes should discuss with the region, site specific approaches that contribute to meeting the objectives.

1. Container/Containment

The Pesticide Management and Disposal rule established requirements for pesticide container design, procedures, standards and label language to facilitate the removal of pesticide residues from containers prior to disposal or recycling. The final rule also established requirements for containment of stationary pesticide containers and procedures for container refilling operations. These requirements provide greater protections to users of pesticides and to the environment by mandating better management and disposal of pesticides and pesticide containers and preventing the release of pesticides to the environment in the event of leaks or spills.

Inspections of regulated entities involves: (1) the inspection of product labeling to ensure that proper rinsing and disposal directions are present; (2) inspection of pesticide containers to ensure they meet Department of Transportation (DOT) requirements; and (3) inspection of refilling establishments to ensure they meet the requirements for repackaging/producing pesticides and, if applicable, for secondary containment of stationary containers and mixing and loading pads.

States and tribes that focus on this priority should conduct compliance monitoring activities primarily at producer establishments, marketplaces dealers. These inspections will focus on compliance with labeling, container and containment requirements of the Rule as appropriate. States without prior equivalent containment regulations should focus on the secondary containment, container design and labeling requirements using federal or state credentials as appropriate during inspections. States with existing equivalent state containment regulations should continue their current containment and labeling inspections under state credentials.

The requirements for containment took effect on August 17, 2009. Inspections should be conducted to ensure that secondary containment has been constructed to meet the requirements of the rule or state requirements, and that the containment is being maintained and records are kept in accordance with the rule.

PR Notice 2007-4, issued by OPP, provided directions for manufacturers, producers, formulators and registrants to implement the new pesticide product label language required by the new regulations in 40 C.F.R. Part 156. These requirements become effective on August 17, 2010 for all products released for shipment. States should conduct producer establishment inspections (PEIs), marketplace and dealer inspections to determine if the pesticide product released for shipment after the effective date has the proper labeling.

Container design requirements for non-refillable containers took effect on August 17, 2009. The container design requirements for refillable containers will take effect August 16, 2011. States and tribes should conduct marketplace, dealer and pesticide producer inspections to verify compliance with the design requirements. If questions concerning container design are raised during PEIs or marketplace labeling inspections they should be directed to OPP to determine if the container design meets the requirements of the regulations.

The Agency is aware that certain states may have inspectional jurisdiction for pesticide containment and pesticide production or labeling divided between two state agencies. When inspectional jurisdiction is divided, the state lead agency should coordinate with other state entities having inspectional jurisdiction to ensure that the two state agencies are working in cooperation. In states where this situation occurs, the state lead agency should note the jurisdictional issues, that the other agency is aware of the requirements and report on the activities for which the state lead agency is responsible.

2. Targeted Producer Establishment Inspections

Producer establishment inspections are important to ensure compliance with the registration requirements, and further to ensure industries comply with product registration, formulation, packaging and labeling requirements before and while the products are distributed in the channels of trade. Further, producer establishment inspections ensure that all required FIFRA books and record requirements are kept and maintained. Establishment inspections should be conducted at registrants, producers, formulators, bulk-repackagers, and toll manufacturers to ensure compliance. These unannounced inspections not only ensure compliance but may also uncover violations which may be both civil and criminal activities by the establishments. While conducting these inspections the inspector also should be observant of any suspected violations of other statutory requirements e.g. OSHA, RCRA, TSCA, water, air, etc. In addition to the areas for inspections listed in this paragraph, considerations should also be given to the specific targets listed below. States and tribes that pick this activity should address contract manufacturers and fumigant establishments as part of this activity.

a. Contract Manufacturers

Contract manufacturing is a common practice within the industry. Any person producing a pesticide under contract to the registrant, whether they are a supplemental registrant or not, is an agent of the registrant and as such, is held to the standards imposed on the registrant at the time of registration. Contract manufacturing is typically carried out through contractual agreements but often without rigorous oversight by the registrant. This lack of oversight can lead to adulterated, misbranded or even unregistered products being sold or distributed. The resulting pesticide products may pose unreasonable risk to health or the environment. Inspections targeted at contract manufacturing facilities will help ensure that all pesticide production at such facilities is appropriately regulated.

b. Fumigant Registrants

States and tribes should conduct PEIs to monitor compliance with product composition as well as registration and labeling requirements.

3. Targeted Use Inspections

a. Incident Reduction

The Agency is committed to further reducing the number of moderate to severe incidents associated with pesticides. EPA is particularly focused on reducing the number of human health incidents for the 6 acutely toxic agricultural pesticides with the highest incident rates: chlorpyrifos, diazinon, malathion, pyrethrins, 2,4-dichlorophenoxy acetic acid (2,4-D), and carbofuran. States and tribes should:

- (1) review incident data to focus on those pesticides that have the highest number of incidents taking into account the pesticide's toxicity and

- (2) target inspections to focus on high pesticide use patterns for the six acutely toxic pesticides and high incident use patterns.

Focusing inspection resources on sites where these chemicals are applied will contribute to incident reduction by (1) deterring behaviors, i.e., misuses of pesticides which result in adverse affects on human health and the environment and (2) informing risk management decisions within the registration process. States and tribes should negotiate a number of inspections commensurate with achieving these objectives with their respective regional offices.

b. Vulnerable Watersheds

Reducing the concentration of pesticides in urban and agricultural watersheds remains an Agency priority. EPA is focused on reducing the percentage of urban watersheds that exceed national pesticide program aquatic benchmarks for diazinon, chlorpyrifos, and malathion. EPA also is committed to reducing the percentage of two pesticides, azinphos-methyl and chlorpyrifos that exceed EPA aquatic life benchmarks in vulnerable watersheds. States and tribes should:

- (1) review monitoring data and focus on those pesticides that have the highest number of incidents taking into account the pesticide's frequency of use and
- (2) target inspections to focus on high pesticide use patterns for the five pesticides that exceed aquatic benchmarks.

4. Soil Fumigants

The Agency published the amended reregistration eligibility decisions (REDs) for the soil fumigants chloropicrin, dazomet, metam sodium/potassium, and methyl bromide on June 3, 2009. Ensuring fumigant users understand and comply with the new label requirements, which will begin to appear in the field in 2010 and 2011, is an important component of the fumigant risk mitigation package. States and tribes in high use states should conduct education and outreach initially and conduct compliance monitoring activities by FY2012.

In states that meet the Agency's current definition of high soil fumigant use, initial outreach and education efforts should focus on providing information to applicators and users to ensure that they understand the soil fumigant labels in order to facilitate compliance. EPA Headquarters will develop materials to aid these efforts such as fact sheets, standard presentations, inspector checklists, and Q&As. States should utilize these materials in activities such as site visits, presentations, and meetings.

States and tribes should perform outreach to RUP dealers, certified applicators, and fumigant users about the change in classification (to restricted use) being implemented for the soil fumigants dazomet and metam sodium/potassium; as well as the full range of new risk mitigation labeling requirements being implemented for the soil fumigants chloropicrin, dazomet, metam sodium/potassium, and methyl bromide. Information collected either through the grower notification requirements or the state or tribe's work plan strategy will enhance the state or tribe's ability to conduct effective outreach activities or inspections as needed.

Beginning in 2012 and 2013, states and tribes should conduct fumigant use inspections. These inspections will require the inspector to review extensive use directions, fumigant management plans, risk mitigation for workers, and whether the correct buffer zone was established based on the size of the area being treated and the type of tarp used to cover the treated area.

3.1.2 Priority 2: Protecting the Under Served and Vulnerable Populations

EPA is particularly concerned about potential pesticide impacts to vulnerable populations such as children, the elderly and others with compromised immune systems, as well as groups in rural and urban lower income areas, and agricultural workplaces. Protecting these populations from potentially harmful pesticide exposure requires targeted inspections in ethnic, rural and urban lower income areas. State and tribes may include inspections in these areas that include an educational component highlighting EPA registered, lower risk alternatives to illegal pesticides.

The Agency's goal is to integrate environmental justice with environmental compliance and enforcement activities.

The following list of activities provides opportunities for site specific approaches to reducing pesticide risk within the broader context of the Agency's goal of reducing chemical risk. Grantees should agree in their work plan to conduct inspections and take enforcement actions as needed. The appropriate number of inspections and mix of activities is to be negotiated between grantees and their EPA regional office.

Pesticide compliance monitoring and enforcement activities related to this area of enhanced core include:

- 1. Inspections affecting Vulnerable Populations and Underserved Communities:** The risk of pesticide exposure to vulnerable populations and underserved communities can be difficult to measure. EPA recognizes that pesticide risk to elderly populations may prove to be acute, while pesticide exposure to children may cause disproportionate harm because their immune defenses and bodies are not fully developed. Consequently, EPA requests that grantees target inspections in underserved and vulnerable communities at (a) specialty ethnic marketplaces; (b) e-commerce sites that offer items related to public health concerns, such as bed bugs and dust mites; and (c) inspections in long-term care facilities, hospice centers, nursing homes, adult and child daycare centers, and urban and rural lower income areas. When investigating drift complaints, the states and tribes should consider possible other affected populations of drift such as ag workers families and residents of nearby housing.
- 2. Worker Protection Inspections:** States and tribes continue their emphasis on Worker Protection inspections through ag use inspections consistent with current guidance. EPA's goal is that the Worker Protection requirements help to create a safe work environment in which agricultural workers, their employers and pesticide handlers can perform tasks without concern about pesticide exposure. States and tribes should track

each WPS inspection as either a Tier I or Tier II inspection. WPS tips and complaints should be included in establishing a priority setting plan.

3. **Pesticide Producer Establishment Inspections:** Inspections at pesticide producer establishments help assure that properly formulated, packaged and labeled pesticides are used by consumers. States and tribes should conduct pesticide establishment inspections located in environmental justice areas or that are situated near vulnerable populations. Inspections also should be targeted towards identifying unclear labeling and bogus products. PEI inspections should encompass container/containment facilities and include mixer/loader areas.

3.2 Work Activities to Support the Core Pesticide Compliance and Enforcement Program

Maintaining a viable core compliance and enforcement program is necessary to achieve a strong and credible enforcement presence to deter non-compliance. Recognizing the magnitude of maintaining the core program, the need to address pesticide enforcement program priorities, and the variation in workload across regions and among state programs, states and tribes may need to make adjustments and trade-offs within their core program. States and tribes should work with their EPA Region to ensure that areas with potential high impact receive priority attention during work planning. Areas such as producer establishment inspections, pesticide misuse with significant human health or environmental impacts are examples of potential high impact areas. The grant work plan negotiation process will provide the opportunity to address difficult trade-offs within the core. States and tribes should work cooperatively with their EPA Region to enhance state and tribal compliance monitoring activities. Information and knowledge that EPA regions possess, such as FIFRA Section 7 producer establishment data (that is, the non-confidential Section 7 data such as names and addresses of production establishments, names of pesticides, active ingredients, and devices produced therein, etc.) should be provided to states and tribes to incorporate into their priority setting schemes as well as their routine neutral inspection programs. Each state/tribe should indicate in their work plan their commitment to the following core activities:

3.2.1 Core Program Activities

3.2.1.1 Producer Establishment Inspections (PEIs)

Producer establishment inspections should be targeted with the intention of conducting inspections at all producing establishments within their jurisdiction over an extended period of time. Inspections should be on a routine cycle. Emphasis on PEIs focuses resources at the source of the product and therefore, assures product label changes have been incorporated, products are registered, product labels and labeling are in conformance with their registrations, and assures the integrity of the products. States and tribes should request that the Regions provide name, address and products for which production was reported at each establishment prior to inspection. Because pesticide production data is generally treated as confidential business information (CBI) states and tribes should not verify the veracity of reported production figures. However, state and tribal inspectors may request that production information be sent to the regional office for verification.

This activity may include antimicrobial sampling requests from EPA as part of its overall effort to ensure that these products are registered and efficacious, as well as having the correct product composition and labeling. In addition, PEI's may be requested in response to tips/complaints regarding unregistered products, misbranded products, and devices.

3.2.1.2 Dealer/Distributor/Retailer Inspections

Pesticide dealer/distributor/retailer inspections should be conducted on a routine basis to ensure product compliance as well as compliance with bulk repackaging/custom blending policies, and requirements for the sale of restricted use pesticides. In addition, potential violations found in advertisements, including e-commerce ads, as well as tips/complaints, may require investigation/enforcement action.

3.2.1.3 e-Commerce

State pesticide regulators and U.S. EPA are aware of an increase in advertising, offers for sale, distribution, and sales of pesticide products via the Internet. States, tribes and EPA are concerned about internet sales of unregistered, misbranded and restricted use pesticides, as well as the illegal distribution of pesticide labels.

Many states are concerned about the ease with which so-called e-vendors can establish a virtual store on the Internet. In order to assure compliance with FIFRA, these entities (both large and small) must be aware of the basic regulatory requirements of FIFRA, as well as the regulatory requirements of the states and tribes. In addition, the legality of sales of a number of types of products such as canceled, restricted use, limited use, emergency exemption products, and inactive products vary depending on many different and changing conditions.

The Association of American Pesticide Control Officials (AAPCO) in cooperation with EPA has developed an outreach/compliance assistance piece intended for widespread distribution to pesticide e-commerce sites. It is intended to provide the e-vendor or the potential e-vendor with the basic requirements for selling or distributing pesticides and pesticide services under state and federal laws.

An additional area of concern is commercial auction sites because they act more as brokers, coordinating sales between private parties, rather than conduct direct sales themselves. Moreover, agricultural use products sold via the Internet potentially could make their way into the urban sector more easily.

The EPA has developed a compliance/enforcement strategy for ensuring that pesticides and pesticide services are marketed in accordance with state and federal laws and regulations. This would help to ensure that pesticides that are distributed and sold in e-commerce are treated the same as pesticides marketed in the more traditional manner. States and tribes should include inspections of web sites selling pesticides and pesticidal products as part of their core marketplace inspections.

3.2.1.4 Misuse

States [but not tribes] have primary responsibility under FIFRA for pesticide use violations. Notwithstanding, tribes with pesticide enforcement cooperative agreements with EPA will be accorded the same responsibility to investigate and take enforcement action in instances of pesticide misuse as states do under FIFRA's primacy provisions, if they have tribal laws and regulations governing misuse on tribal lands. Investigations conducted by tribal inspectors using EPA credentials must be turned over to the Regional Office for enforcement action. States should continue to address pesticide misuse, particularly as it relates to WPS, food safety, structural pest control, and drift. Regarding allegations of misuse, states and regions should review their current criteria for section 27 referrals and ensure that they address any allegations of human harm, especially those involving agricultural pesticides and WPS violations. The criteria for section 27 should also address those instances of serious harm to humans or the environment which the state becomes aware of first. Both Regions and states should track tips/complaints received and their disposition. Note: not all referrals made to the states will be tracked as section 27 referrals and the only tracking necessary for referrals that fall outside of the section 27 criteria is that the referral has been made.

3.2.1.5 Pesticide Infrastructure

Cooperative agreement resources will be used to undertake the following activities to support infrastructure needs for the applicant's compliance enforcement program.¹

¹ *Funds to attend PREP and PIRT training do not need to be factored into state or tribal training needs because these funds are set aside and provided separately to participants in those training opportunities.*

- a. Pesticides Inspector Residential Training (PIRT): The Office of Compliance's Agriculture Division, in cooperation with state pesticide agencies, generally offers two PIRT courses per year. The objective of the program is to train a core group of inspectors that can, in turn, train other inspectors in their state. OC provides funding to a volunteer state to host the PIRT course to which other state/tribal/territorial inspectors are invited. This course provides training to inspectors on how to conduct the different types of pesticide inspections as well as provide tips and necessary tools to instruct other inspectors to conduct inspections. OC currently offers three pesticide courses: (1) Pesticide Use Inspection Training Course; (2) Pesticide Product Enforcement Training Course and (3) Worker Protection Inspector Training Course. States, tribes and regions should incorporate participation in these courses into their work plans.² States and tribes interested in hosting PIRT courses should notify OC/AgD through their Regional Office.
- b. Pesticide Regulatory Education Program: The Pesticide Regulatory Education Program (PREP), jointly sponsored by OECA and OPP, is an educational program for senior management, senior scientists, managers and supervisors of field enforcement and compliance assurance programs, and those slated for management positions of state or tribal pesticide regulatory and environmental management programs throughout the U.S. PREP courses are designed to provide practical, up-to-date information on technical, policy, and management related issues. PREP curriculum relies upon the expertise of both private and public sector individuals to offer course participants current perspectives on issues relevant to the regulation of pesticides. As with other training, states and tribes should specifically identify personnel who would most benefit from this training.
- c. Other training opportunities: Each Regional Office should work cooperatively with their states and tribes to sponsor yearly training opportunities, particularly for pesticide inspectors. States and tribes should set aside cooperative agreement funds to cover costs associated with this training.
- d. Case Development Training: Regions should encourage state and tribal attendance at case development training courses.
- e. Enhanced Database Development: Regions are asked to strengthen pesticides

² Additional information on available training opportunities for state and tribal staff can be found on the OECA home page for the National Enforcement Training Institute. Visit the site at "<http://www.epa.gov/compliance/training/neti/index.html>", and click on Course Catalog.

compliance program infrastructure through enhancement of database systems. Regions should work with states and tribes wherever possible on this objective. Enforcement funds may be used to develop or enhance systems for the collection and management of targeting, compliance, or enforcement data, particularly in support of the pesticides field data program.

3.2.1.6 Compliance Assistance

- a. Compliance assistance activities: The state/tribe and region should agree on the compliance assistance activities to be conducted where appropriate. These activities may include: (1) providing outreach materials to improve compliance, for example, in areas where regulatory requirements are new or violations are occurring due to a lack of understanding; (2) conducting seminars or public meetings with the regulated industry to explain requirements or answer questions; (3) conducting compliance assistance visits/workshops; to providing remedial training for violators; and (4) developing programs which reflect EPA's policies on self audits. When new EPA policies are issued, applicants are encouraged to reflect such policies within their programs as warranted.
- b. EPA National Agriculture Center: The Office of Compliance, OECA, has established the National Agriculture Center (Ag Center). The Ag Center helps producers of agricultural commodities and their supporting businesses comply with all environmental requirements, prevent pollution before it occurs, and reduce costs associated with compliance by identifying flexible, common-sense ways to achieve compliance.

The primary purpose of the multi-media, sector-oriented Ag Center is to provide a base for “first stop shopping” for the agriculture sector - a place to provide information on EPA's environmental requirements affecting the agriculture sector, information that is environmentally protective and agriculturally sound. The Ag Center provides information and technical support to state regulatory programs to assist them in meeting the compliance assistance needs of their regulated agricultural communities.

The Ag Center utilizes existing distribution mechanisms, such as USDA-Extension, state pesticide regulatory agencies, crop consultants, etc. The Ag Center is enlisting the active participation of representatives of the agricultural community including USDA, state lead agencies, trade associations and others providing information to the agricultural community. Active participation by representatives from all members of the agricultural community helps the Ag Center produce the types and kinds of information needed.

States and tribes should include in their compliance programs a commitment to work, through the regions, with the Ag Center to identify information/compliance assistance needs and to help field test materials. States and tribes are encouraged

to use the Ag Center's services and to provide feedback to the Ag Center on its services to ensure their needs are being met.³

3.2.1.7 Cancellations, Suspensions, Other Major Regulatory Actions, Recalls, and National High Risk Initiatives

Implementation of cancellation or suspension orders, National Compliance Strategies for canceled or suspended pesticide products and other major regulatory actions must be a part of every state enforcement program. States and tribes will conduct inspections and other compliance monitoring activities to assure compliance with major pesticide regulatory actions within the time frames specified in the nationally issued Compliance Monitoring Strategies. Inspections and other compliance monitoring activities for this priority area may address: (a) major cancellation actions; (b) all suspensions under FIFRA Section 6; (c) FIFRA Section 3(c)(2)(B) suspensions; and (d) other major pesticide regulatory actions (i.e., label improvement programs, etc.).

EPA may also require registrants and distributors to recall pesticide products which have been both suspended and canceled. Once these recall requirements are effective, applicants will need to inspect for compliance and enforce where applicable. This applies only to pesticides suspended under Section 6. Once these recall requirements are effective, the applicants and regional offices should discuss the relative priority of the different activities being conducted under their enforcement cooperative agreement and renegotiate work activities as appropriate. Recommended procedures for recalls and disposal are found in 40 C.F.R. Part 165. Violations of EPA recalls should be referred to the appropriate EPA Region.

States and tribes may also be requested to participate in National initiatives to address specific risks. OECA will work with regions and states and tribes to develop and implement such initiatives. Because the workload in this area cannot be anticipated in advance, it is understood that states and tribes may renegotiate the outputs in the cooperative agreement upon receipt of requests to conduct activities in the above areas.

3.2.1.8 Imports and Exports

States and tribes should conduct inspections for imported pesticides on regional request; the specifics of these inspections should be arrived at after consultation and negotiation with the regional office. These may include shipments detained at ports of entry or foreign trade zones that the region has determined through Notices of Arrival or other information may be in violation of FIFRA.

³ *The Ag Center's toll free telephone number and fax-on-demand number is 1-888-663-2155, and its web site is at <http://www.epa.gov/agriculture..>*

States and tribes should also continue to conduct pesticide export inspections; the specifics of these inspections should be arrived at after consultation and negotiation with the regional office. **These inspections are generally to be included in the routine producer establishment inspection (PEI) program and should include verification of proper labeling, FIFRA section 7 reporting, and documentation of Foreign Purchaser Acknowledgement Statements (FPAS).**

3.2.1.9 Section 18, Section 24(c) and Experimental Use Permits Monitoring

Under Section 18, both federal and state agencies may be exempted from any provision under FIFRA by the Administrator if an emergency condition exists. Each cooperative agreement application work plan should reflect how the state/tribe plans to address monitoring and follow-up on Section 18 exemptions to ensure compliance with the terms and conditions of section 18's within the state, especially suspected misuse violations. The number of Section 18 inspections should be negotiated between the region and the state/tribe.

Section 24(c) permits the state to provide registration for additional uses of currently registered pesticides in their state. If the 24(c) uses proposed by the state are not disapproved by the Agency, the state shall monitor the sale, distribution and use of the particular pesticide in accordance with the 24(c) requirements. Each cooperative agreement application work plan should reflect how the state plans to address monitoring and follow-up on Section 24(c) permits to ensure compliance with the terms and conditions of section 24(c)'s within the state, especially suspected misuse violations. The number of Section 24(c) inspections should be negotiated between the region and the state.

Experimental Use Permits (EUP) monitoring shall consist of monitoring, inspection and oversight of the EUP and the use/misuse of the pesticide. The pesticide is subject to the terms and conditions of the EUP and the state/tribe shall ensure compliance with these terms through inspections. Each cooperative agreement application work plan should reflect how the state/tribe plans to address monitoring and follow-up on EUPs to ensure compliance with the terms and conditions of the EUP, especially suspected misuse violations. The number of EUP inspections should be negotiated between the region and the state/tribe.

3.2.1.10 Antimicrobial Pesticides

Antimicrobials are used in homes, hospitals, cafeterias, restaurants, and many other institutions. While all pesticide products are required to work as claimed by the manufacturer, EPA is particularly concerned about the effectiveness of antimicrobial pesticides because their effectiveness is usually not obvious and studies suggest that at least twenty percent of pesticides are ineffective.

Over the past several years, EPA implemented a comprehensive strategy to ensure the efficacy of antimicrobial pesticides, placing highest priority on those that have significant public health uses. A large part of EPA's efforts involved testing hospital disinfectants and tuberculocides. Product samples collected by states and regions, voluntarily submitted by registrants as well as product samples purchased by the Agency have been evaluated for selected product performance claims to ensure that they perform as intended. Current results suggest that approximately thirty percent of the hospital disinfectant products do not meet Agency efficacy standards. The Agency has set the end of 2010 as the goal for completing the post-registration evaluation of efficacy of the remaining hospital disinfectants and tuberculocides under the ATP. In addition, EPA is developing an ATP Strategy that includes continued oversight of primary and distributor products. The strategy and implementation plan are scheduled to be completed in early 2010 and will be publicly available.

In the 2011-2013 grant cycle, states and tribes should expect a limited number of inspection requests from EPA for antimicrobial products as follow-up to the efficacy reviews.

3.2.1.11 Endangered Species

The Office of Enforcement and Compliance Assistance (OECA) is not requiring targeted endangered species use inspections. Therefore, OECA does not expect implementation of use limitations through Endangered Species Protection Bulletins to greatly modify routine procedures for pesticide use inspections or to result in the collection of large amounts of data during the initial reporting year. During FY2011-2013, OECA will continue collecting inspection-related information to establish a baseline picture of compliance with labeling – including labeling focused on endangered species protection.

State and tribal inspectors must collect and report to EPA the following information to help the Pesticide Program determine the effectiveness of communication, outreach and educational activities for pesticide users:

- the number of use and for cause inspections where it could be determined that the pesticide product was labeled requiring the applicator to follow the pesticide use limitations and any applicable Endangered Species Protection Bulletins; and
- the number of use and for cause pesticide inspections where the pesticide applicator was alleged to be in violation of the Endangered Species labeling requirements, including any applicable Endangered Species Protection Bulletins

Refer to Section 4.1.3 for reporting requirements.

3.2.1.12 Container/Containment Inspections

On August 16, 2006, the Agency published in the Federal Register (71 FR 47330 – 47437) the final rule, “Pesticide Management and Disposal; Standards for Pesticide Containers and Containment.” The rule established requirements for pesticide container design, and procedures,

standards and label language to facilitate the removal of pesticides from containers prior to disposal or recycling. The final rule also established requirements for containment of stationary pesticide containers and procedures for container refilling operations.

States and tribes should conduct a compliance monitoring program for the container and containment regulations. EPA Headquarters has developed a compliance strategy which details the compliance assistance and compliance monitoring activities states should be undertaking in order to assure compliance with the container and containment regulations. The activities are based on the phased effective dates for various portions of the regulation. State and tribal compliance programs are based upon the compliance strategy. August 17, 2011, is the effective date for refillable container and repackaging requirements for registrants and refillers, the final phase of the container and containment regulations.

3.2.1.13 Worker Protection Compliance and Enforcement Activities

EPA's goal is that the Worker Protection requirements help to create a safe work environment in which agricultural workers, their employers and pesticide handlers can perform tasks without concern about pesticide exposure. This means that there are quality state and tribal worker protection compliance programs, well trained inspectors, well documented thorough investigations that include worker interviews. Complaints are promptly responded to. Enforcement actions are timely and consistent with an enforcement response policy that achieves deterrence. Establishments with violations are re-inspected.

- For FY2010 - 2013, the States and Tribes should direct appropriate resources to maintain its emphasis on inspections involving high risk, high exposure situations to ensure health of the workers. The appropriate number of inspections to be conducted in any state or tribal lands should be consistent with the number of farms and farm employees covered by WPS. The appropriate number of WPS inspections is to be negotiated between grantees and their EPA regional office.
- Routine Tier I WPS use inspections should be conducted so as to assure coverage of all agricultural establishments regulated under the WPS. States/tribes should focus their worker protection compliance monitoring activities on establishments and situations that have the highest likelihood of pesticide worker and handler risk, such as: (1) timing inspections during periods of pesticide application to address compliance with key worker provisions like worker training, restricted entry interval (REIs), posting, decontamination sites, etc.; (2) visiting sites with labor intensive crops and/or those crops that traditionally require a lot of hand labor like vegetables, fruit tree and orchard crops, etc.; (3) timing inspections during the growing season to coincide with high risk labor practices and worker exposure scenarios such as those activities that result in high contact with treated foliage and exposure to residues such as harvesting, thinning, staking, pruning, detasseling, etc.; and (4) timing inspections during times when high risk pesticides would be applied at a specific time of year as a matter of general crop practice (e.g. methyl bromide in strawberries or azinphos methyl in fruit orchards).

- States should follow the EPA WPS Agriculture Guidance. State enforcement actions should be reported in the work plan accomplishments report with a brief narrative description about each noteworthy civil or criminal penalty enforcement action resulting from a WPS inspection. EPA believes that it is important to communicate to the public the impact of the WPS compliance and enforcement program to protect pesticide workers beyond numerical targets. A narrative description of all WPS enforcement actions which have high level significance or a significant enforcement impact furthers the goal of ensuring the public that the WPS rules are enforced.
- States should provide information on the number of other enforcement actions resulting from WPS inspections such as stop sale/use orders, warning letters, etc. in each of the reporting categories.
- Particular attention should be given to follow-up inspections at agricultural establishments where prior enforcement action for WPS violations was taken
- A Regional review of WPS actions should be included as part of mid- and end-of-year regional reviews to ensure enforcement actions are consistent with state enforcement response policies. EPA Regions should review no less than 10% of the case files as part of their oversight responsibilities. Regions can use the template provided in Appendix 3c or any other form the region has developed to ensure that their states are following the EPA WPS Agricultural Guidance.

3.2.2 Laboratory Funds

Each year EPA provides a small grant on a rotating basis to state labs that support pesticide monitoring and enforcement activities. These funds were authorized after a request for funding by the state labs. Traditionally, the funds were used to support the purchase of lab equipment. Given the fact that the amount of funds has not changed in recent years, EPA is amending the purpose of the funds. The specific funds provided for lab equipment may now be used to support the pesticide monitoring and enforcement activities of the lab beyond the purchasing of equipment. The funds cannot be used by other parts of a states pesticide enforcement program; they must be utilized by the lab. Remember, the use of the finds also must comply with all appropriate grant regulations and policies.

3.2.3 Optional Program Activities

State and tribal laboratories conducting pesticide sample analyses are encouraged to participate in the Pesticide Residue Check Sample Program. The program is operated by the regulatory laboratory of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection. The program is a self-sustaining proficiency testing program for states and tribes to help support the credibility of their pesticide program's enforcement cases. Additionally, the check sample program provides detailed reports that help state and tribal laboratories identify

operational areas in need of improvement as well as support their Quality Management Plan (QMP). Currently 31 state pesticide labs participate in the Program.

EPA regional offices may consider use of discretionary funds to support a state or tribe's participation in the check sample program. If your state or tribal laboratory is interested in participating in this pilot program or if you would like more information, please visit the check sample website at <http://www.epa.gov/region8/toxics/pests/residue.html> or contact Steve Sobek at: (608-267-3500) or Steve.Sobek@wisconsin.gov.

SECTION 4: REPORTING, ENFORCEMENT MEASURES AND EVALUATION REQUIREMENTS

4.1 Reporting, Enforcement Measures and Evaluations

Section 4.1.4 contains a chart on when the various reports are due.

4.1.1 Core Pesticide Enforcement Reporting and Evaluations

States and tribes must submit reports as required by EPA grant regulations or as negotiated by the regions.

The state/tribal cooperative agreement must include an evaluation plan mutually acceptable to EPA and the applicant. At a minimum, the plan should include a schedule for conducting timely end-of-year evaluations, preferably on-site [if the regional office's budget allows]. Applicants must report their pesticide program activities and accomplishments conducted under the cooperative agreement in a time frame agreed to by the applicant and the regional office. In addition to the evaluation reports that OECA requires [and are a requirement of EPA's grant regulations], regions may negotiate reporting requirements in addition to those of EPA headquarters.

OECA is to be provided with timely copies of the end-of-year cooperative agreement evaluation reports. End-of-Year reports should use the End-of-Year draft report format at <http://intranet.epa.gov/oeca/oc/ag/grants.html>. If the pesticide enforcement cooperative agreement funding for a state, territory, or tribe has been included in a Performance Partnership Grant (PPG), these same requests for copies of grant documents continue to apply.

The EPA Regional Office will submit evaluation reports within 90 days of the close of the state's/tribe's cooperative agreement fiscal end-of-year. Evaluation reports are to be submitted to:

***Chief, Agriculture Branch (2225A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW***

Washington, DC 20460

4.1.2 WPS Reporting

States and tribes should annually summarize specific areas of compliance and non-compliance from all WPS inspections and report these at least annually at the End-of-Year evaluations. For FY2011-2013, states and tribes should continue to use revised WPS specific 5700-33H form to capture additional information on the most commonly violated portions of the WPS rule.

For more information, see section 3.1.1.

4.1.3 Endangered Species Inspection Reporting

States and tribes should annually summarize collect and report to EPA compliance and non-compliance areas for all inspections where Endangered Species Bulletins are applicable at the End-of-Year evaluations. For FY2011-2013, states and tribes should use the Endangered Species Inspection report Form found in Appendix 12.

For more information, see section 3.2.1.11.

4.1.4 PART Measure e Reporting

The Office of Management and Budget (OMB) created an instrument entitled the Program Assessment Rating Tool (PART), to enable it to review the effectiveness of government programs. PART was developed to assess and improve program performance so that the federal government can achieve better results. A PART review helps identify a program's strengths and weaknesses to inform funding and management decisions aimed at making the program more effective. The PART therefore looks at all factors that affect and reflect program performance including program purpose and design; performance measurement, evaluations, and strategic planning; program management; and program results.

In 2004, the pesticide enforcement cooperative agreements program underwent a PART review, resulting in a rating of "Ineffective." More specifically, OMB found three deficiencies with the pesticide enforcement cooperative agreements program:

1. States do not collect sufficient outcome measures to assess the program's effectiveness.
2. EPA's oversight of grant performance focuses only on reviewing output measures collected by States (numbers of inspections and investigations) and the state's financial management of its grant funds. The oversight does not evaluate whether the state is using its funds in the most effective way.

3. The higher the percentage of EPA funding for a state's total program, the higher the average cost of conducting enforcement actions, which suggests an ineffective use of federal funds.

To address these deficiencies, OECA, EPA’s regional offices, states and tribes worked together to develop new program outcome measures. Three measures were agreed upon, and included as a requirement in all future grant work plans, beginning with the FY2006 pesticide enforcement grants. Regions should continue to work with their states to obtain the data for the PART measures and insure its quality. The data is a management tool to be used to improve performance. The three PART measures are:

Repeat Violator Measure: Percent of recipients of enforcement actions receiving subsequent enforcement actions, as calculated by the number of regulated entities receiving subsequent enforcement actions divided by the universe of entities receiving enforcement actions.

Complying Action Measure: Percent of complying actions taken as a result of grantee compliance monitoring and enforcement actions, as calculated by the number of enforcement actions resulting in verified compliance divided by the total number of enforcement actions.

Efficiency Measure: Cost of conducting inspections that identify violations, as calculated by the total amount of grantee and EPA enforcement funds divided by the total number of enforcement actions.

See Appendix 6 for more specifics on these three PART measures and additional guidance concerning the measures. The form included in Appendix 6 can be used to calculate the numbers for entry into ACS.

4.1.5 Container/Containment Reporting

States and tribes should annually summarize specific areas of compliance and non-compliance from all containment/containment inspections and report these at least annually at the End-of-Year evaluations. For FY2011-2013, states and tribes should use container/containment specific 5700-33H form to capture additional information on the most commonly violated portions of the container/containment rule.

4.1.6 Due Dates for Enforcement Reports

Report	Due Date	Rationale
PART Measures	Regions submit to OC/AgD by December 31	
End-of-year Cooperative	States: submit to	The end-of-year cooperative

Agreement Evaluation Reports	Regions within 90 days of the end of the grant Regions: submit to OECA: February 28	agreement evaluation reports deadline is controlled by EPA grant regulations.
EPA Form 5700-33H	Regions: enter data into ICIS or FTTS, as appropriate, by October 30	Note: Data for EPA's annual results press release (generally November 10) begins to be collected around October 15 each year.
EPA Form 5700-33H WPS	Regions submit to OC/AgD by December 31	
Endangered Species Inspection Report Form	Regions submit to OC/AgD by December 31	
EPA Form 5700-33H Container/Containment	Regions submit to OC/AgD by December 31	

4.2 Program Reporting and Evaluations

States and tribes must submit reports as required by EPA grant regulations and as negotiated by the regions.

The state/tribal cooperative agreement must include an evaluation plan mutually acceptable to EPA and the applicant. At a minimum, the plan should include a schedule for conducting timely end-of-year evaluations, preferably on-site [if the regional office's budget allows]. Applicants must report their pesticide program activities and accomplishments conducted under the cooperative agreement in a time frame agreed to by the applicant and the regional office. In addition to the evaluation reports that OPP requires [and are a requirement of EPA's grant regulations], regions may negotiate reporting requirements in addition to those of EPA headquarters.

OPP no longer requires that mid-year evaluation reports of cooperative agreement activities be submitted. However, the Region may have its own requirements to perform mid-year evaluations. Regardless of OPP's determination that it does not need to obtain a mid-year evaluation report, it views such an evaluation as an opportunity for the Region and the recipient to assess progress and make any mid-year adjustments that may be needed. OPP emphasizes its need to receive end-of-year evaluations in a timely manner as indicated below. If the pesticide program cooperative agreement funding for a state, territory, or tribe has been included in a Performance Partnership Grant (PPG), these same requests for copies of grant documents continue to apply.

The EPA Regional Office will submit to OPP an end-of-year evaluation report for each grantee addressing the reporting required under each program area listed in Section 2 of this guidance, and in the End-of-Year Program Report format found at <http://intranet.epa.gov/oeca/oc/ag/grants.html>, no later than Feb 28th of each year (i.e., for FY2011 by Feb 28th, 2012, etc.). These reports should be sent in electronic format by e-mail to OPP-EOYReports@epa.gov. Information collected in CPARD for Worker Safety, POINTS for Pesticides in Water, and Appendix 11 for the Endangered Species Protection Program, need not be repeated in the final report. If needed, the mailing address is:

***Chief, Government and International Services Branch
Field and External Affairs Division (7506P)
EPA Office of Pesticide Programs (OPP)
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460.***

4.2.1 Significant Incident Reporting

Applicants are encouraged to report to the Regional office, incidents involving serious adverse effects. The Region will then forward that information to EPA HQ at the email and mailing address listed above. Incidents will include those which involve workers, handlers, the public, and non-target species. This information will be useful for OPP to determine if there are patterns of incidents requiring new risk mitigation, such as label changes or additional regulation.

SECTION 5: STATE/TRIBAL COOPERATIVE AGREEMENT AUTHORIZATION AND ADMINISTRATIVE REQUIREMENTS

To ensure an orderly administrative review, programmatic evaluation and funding of cooperative agreement applications, the applications should be received by the Regional Grants Management Offices at least 60 days prior to the beginning of the proposed budget period. This is a federal requirement which must be adhered to in accordance with 40 C.F.R. sec. 35.105. Awards and funds will be made and distributed as promptly as possible once Federal Budget figures are finalized.

Each application for –FY2011-2013 State/Tribal cooperative agreement funds must include a proposed work plan as discussed earlier in this guidance document and as required by the EPA Regional Office. The applicant and the Regional Offices should work closely together to develop a complementary EPA/Applicant program.

In accordance with 40 C.F.R. sec. 35.113, EPA will not reimburse applicants for costs incurred before the date of award, unless it is a continuation award and the application was submitted by the applicant prior to the expiration of the prior budget period. If applications for continuation awards are not received in a timely manner, it will be necessary to request a formal deviation, approved by the Grants Administration Division, before any pre-award costs may be approved. Most pesticide cooperative agreements are continuing awards, however, any need to request formal deviation may delay award of funds further. If there is any question regarding this area, the Regional Grants Management Office should be contacted for clarification.

In addition to this guidance document, Regional Offices and the applicant should consult the appropriate regulations in 40 C.F.R. Parts 31 and 35, the Administrator’s Policy on Performance-Based Assistance, and the Assistance Administration Manual, previously distributed, when preparing, negotiating and evaluating cooperative agreement applications. Applicants can find more information on grants policy, grants competition, regulations, and so forth at http://www.epa.gov/ogd/grants/how_to_apply.htm.

5.1 Authorization for State/Tribal Cooperative Agreements

Section 23(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, authorizes EPA to enter into cooperative agreements with states, territories, and Indian tribes (“applicants”) to conduct pesticide enforcement programs and Section 23(a)(2) provides for certification and training programs. Pursuant to the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for fiscal year 1999, pesticide program implementation grants under section 23(a)(1) of FIFRA are available for “pesticide program development and implementation, including enforcement and compliance activities” (Pub.L. 105-276, Title III, Oct. 21, 1998, 112 Stat. 2499). Under FIFRA section 2(aa), the term “state” means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territories of the Pacific Islands and American Samoa.” The term “Indian Tribe/reservations” refers to Federally Recognized Tribes and

reservations.

5.2 Performance Partnership Grants (PPGs)

The Agency expects authorization for performance partnership grants (PPGs) to continue in FY2008 and beyond. Applicants may negotiate a PPG in lieu of both a pesticide program and an enforcement cooperative agreement. Separate guidance exists regarding the application and other requirements for PPGs. Under the PPG system, Regions and applicants should continue to use this Pesticide Program State/Tribal Cooperative Agreement Guidance to ensure that program and enforcement priorities are considered. If a Region and applicant wish to negotiate a PPG that appreciably modifies the levels of attainment in this FIFRA specific guidance, such as a level of attainment for worker protection, then the senior management of that Region should first discuss this shift in priorities with the appropriate National Program Manager.

5.3 Standard Application Forms

The regulations (40 C.F.R. sec. 31.10) require applicants for assistance to use Standard Form 424 (revised 4/88). Application kits including all the necessary application forms may be obtained from the EPA Regional Grants Management Office.

5.4 Budget Requirements

5.4.1 OPP Cost Sharing

Certification Programs: FIFRA, section 23(a)(2), limits EPA's share of the "total project costs" to not more than 50% of the total funding level. [**Note:** For tribal applicants, applying for a PPG the cost share is limited to no more than 10%. (See 40 C.F.R. sections 35.530 - 35.538.)]

Other Field Programs: A 15% match by applicants is recommended. This may include in-kind services.

Additional Program Activities: A 15% match by applicants is recommended. This may include in-kind services.

Pesticide Management Program Maintenance: A 15% match by applicants is recommended. This may include in-kind services.

5.4.2 OECA Cost Sharing

Enforcement Programs: A 15% match by applicants is recommended. This may include in-kind services.

Additional Program Activities: A 15% match by applicants is recommended. This may

include in-kind services.

5.5 *Itemized Budget Detail*

The applicant should include supportive itemized statements or fact sheets to expand upon the expenditures proposed for at least (1) certification; (2) the other specific program areas (worker protection, water quality and endangered species); (3) each additional program activity for which the applicant is requesting funding; (4) enforcement activities; and (5) Pesticide Management Program Maintenance for the cost categories:

- personnel
- travel
- equipment and supplies

Budget details must conform to cooperative agreement/grant requirements. Specific information regarding the level of detail can be obtained from the Regional Grants Management personnel.

States and tribes have the option of applying for a Pesticide Performance Partnership Grant (PPG) which affords the option of combining the enforcement, certification and program budgets into one. States and tribes interested in a PPG should direct their inquiries to their Regional contacts. If a state or tribe has a PPG then the itemized budget would not be required and the PPG guidance would apply.

5.6 *Work Plan Narrative*

Each cooperative agreement application must be accompanied by a Work Plan consistent with the requirements in 40 C. F. R. 35.107.

EPA expects that work plan activities may change from year to year as national and local conditions and priorities are updated. Therefore, a new narrative statement for each component must be submitted with the application for review and approval annually.

The work plan is negotiated between the applicant and the Regional Office. If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or core performance measures in the national program guidance associated with the proposed activities, the Regional Office must consult with the appropriate National Program Manager [OPP and/or OECA] before agreeing to the work plan. The work plan must specify:

- work plan components to be funded under the grant;
- estimated work years and the estimated funding amounts for each work plan component;
- work plan commitments for each work plan component and a time frame for their accomplishment;
- a performance evaluation process and reporting schedule in accordance with § 35.115 of this subpart; and

· roles and responsibilities of the recipient and EPA in carrying out the work plan commitments.

The work plan must be consistent with applicable federal statutes; regulations; circulars; executive orders; and EPA delegations, approvals, or authorizations.

5.7 Accountability under the State/Tribal Cooperative Agreement

According to 40 C.F.R. sec. 31.20, recipients must expend and account for funds awarded in accordance with state/tribal laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures must be sufficient to: (1) track the expenditure of funds separately for at least the certification program, the other pesticide program areas (worker protection, water quality and endangered species), and for each additional program activity funded; (2) permit preparation of Financial Status Reports required by the regulations; and (3) permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Applicants must state in the narrative portion of their application that they will ensure that the activities detailed in 40 C.F.R. sec. 31.20 will be followed.

Applicants must maintain accounting records for funds awarded for each component under each agreement including: receipts, matching contributions, and expenditures in accordance with all applicable EPA regulations and generally accepted accounting principles.

For continuing programs, a proper filing system should be in place to maintain accounting information at the start of the project period. New applicants must submit a description of the accounting filing system with their cooperative agreement application and the system should be evident within three months of the start of the project period.

The recipient's expenditures under the agreement must follow cost categories (i.e., budget line item or program elements) established in the original agreement. Except as provided for under 40 C.F.R. sec. 31.30, recipients and sub-recipients can re-budget within the approved direct cost budget. Certain types of changes require prior approval [see 40 C.F.R. sec. 31.30(c) through 31.30 (f)].

States and tribes have the option of applying for a Pesticide Performance Partnership Grant (PPG) which affords the option of combining the enforcement, certification and program budgets into one. States and tribes interested in a PPG should direct their inquiries to their Regional contacts. PPG applicants do not have to account for actual expenditures for specific program activities at the end of the budget and project period as detailed in Section 4.5 and the PPG guidance would apply.

5.8 *Quality Management Plans (QMPs) and Quality Assurance Project Plans (QAPPs)*

For projects involving environmental programs, EPA assistance agreement recipients must implement or have implemented a quality system conforming to the American National Standard ANSI/ASQC E4-2004, Quality systems for environmental data and technology programs-Requirements with guidance for use. This quality system shall be applied to all environmental programs within the scope of the assistance agreement. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

DOCUMENTATION NEEDED FROM APPLICANT:

1. All applicants for EPA assistance (grants) shall submit a Quality Management Plan (QMP) prepared in accordance with the specification provided in EPA Requirements for Quality Management Plans (QA/R-2) <http://www.epa.gov/quality/qs-docs/r2-final.pdf>., which describes the quality system implemented by the applicant.
2. The QMP shall be reviewed and approved by the EPA Project Officer and the EPA Quality Assurance Manager as a condition for award of any assistance agreement. The QMP must be submitted as part of the application. If the QMP is not submitted as part of the application and EPA decides to fund the project, EPA will include a term and condition in the assistance agreement. This term and condition requires the recipient to submit the QMP within a specified time after award of the agreement and notifies the recipient that they may not begin work involving environmental programs until the EPA Project Officer informs them that the QMP has been approved.
3. The Assistance Agreement requires the recipient to submit Quality Assurance Project Plans (QAPPs) to EPA for review and approval by the EPA Project Officer and EPA Quality Assurance Manager before undertaking any work involving environmental measurement or data generation. QAPPs shall be prepared using EPA Requirements for Quality Assurance Project Plans (QA/R-5) <http://www.epa.gov/quality/qs-docs/r5-final.pdf>.
4. Approval of the recipient's QMP by the EPA Project Officer and the EPA Quality Assurance Manager, may allow delegation of the authority to review and approve Quality Assurance Project Plans (QAPPs) to the recipient based on procedures documented in the QMP

AGENCY DOCUMENTATION:

The Quality Management Plan (QMP) for the EPA organization providing the financial assistance must define the process to be used to ensure that the Assistance Agreement adequately addresses Quality Systems issues and complies with ANSI/ASQC E-4. In addition, the QMP must describe how the EPA organization will conduct oversight of the assistance agreement to assure its implementation as documented.

The same QMP must also define the respective responsibilities of the EPA Project Officer and the EPA Quality Assurance Manager in reviewing and approving QMPs and QAPPs submitted to the EPA Project Officer for review and approval.

Request for information or questions should be addressed to Betsy Grim, (703-305-7645 or grim.betsy@epa.gov).

5.9 Certification Concerning and Disclosure of “Influencing Activities”

Persons (including state agencies) who request or receive grants or cooperative agreements exceeding \$100,000 shall file with the awarding agency a certification that the person has not used, and will not use, federal funds to influence the award of the grant or cooperative agreement. Such persons shall also file a disclosure form if they used, or have agreed to use, non-federal funds to influence the award of the cooperative agreement. Both the certification and the disclosure form should be in the application kit supplied by EPA. If the documents are not in the kit, the applicant should contact the Regional Grants Management Office of EPA.

5.10 Debarment and Suspension Certification

The applicant must include EPA form 5700-49, the Certification Regarding Debarment, Suspension, and Other Responsibility Matters. This form certifies that the applicant currently is not ineligible for assistance due to disbarment, suspension, or other infraction.

SECTION 6: APPLICATION REVIEW PROCEDURES

Applications are submitted to the appropriate EPA Regional Office. Regions should review the application to ensure all of the required elements have been addressed. Application review procedures, including OPP and OECA contacts when there are questions, can be found in Appendix 2.

SECTION 7: ALLOTMENT OF STATE/TRIBAL COOPERATIVE AGREEMENT FUNDS

The pesticide enforcement allotment (Federal Insecticide, Fungicide, and Rodenticide Act, section 23(a): is based upon 1) a formula which includes the following factors: the state's population, the number of pesticide-producing establishments and certified private and commercial applicators, and the number of farms and farm acreage and 2) a base amount for each state.

The pesticide applicator certification and training allotment (Federal Insecticide, Fungicide, and Rodenticide Act, section 23(a): is based upon 1) a formula which includes the following factors: the number of farms and the number of private and commercial applicators requiring certification or recertification and 2) a base amount for each state.

Allotments are made annually and distributed to the Regional Offices. Regional Offices make final awards.

Summary of the Pesticide Program Priorities and Activities in the FY2011-2013 Joint OPP/OECA Grant Guidance

Pesticide Worker Safety:

- Assure baseline implementation of the WPS regulation/program.
 - Conduct WPS outreach to affected regulated and protected communities (i.e., WPS covered establishment, workers & handlers, health care providers, and establishments affected by the new soil fumigant labeling requirements).
 - **NOTE:** For FY11-12, for some high fumigant use states, Regions may negotiate workplans in which outreach on the new soil fumigation requirements occur at the expense of all other WPS outreach core activities.
 - Support worker and handler training.
 - Assure mechanisms are in place to enable coordination and follow-up on reports of occupational pesticide exposure or incidents related to pesticide use/misuse or WPS violations.

- Assure baseline implementation of the C&T regulation/program.
 - Assure pesticide applicator certification programs are being implemented and maintained in accordance with EPA approved certification plans
 - Use CPARD system for maintaining certification plans and for submitting the annual C&T accomplishment reporting information required by Part 171
 - Monitor initial certification and recertification training programs to assure the quality and consistency of training programs
 - Address any apparent compliance problems/issues associated with RUP use, including outreach to RUP dealers and affected establishments/users on new soil fumigant labeling requirements and RUP classification

Container/Containment:

- Continue to develop a program to implement the container-containment regs; some specific steps are suggested (not required).
- Inform EPA (Region and/or HQ, as appropriate) about changes to state regulations and statutes relating to pesticide containers or containment

Pesticides in Water

- Three-Tier Approach:
 1. Evaluate **Pesticides of Interest** to determine whether a human health or environmental reference point is likely to be approached or exceeded in localized areas of a State or Tribe, and the pesticide should be elevated to a **pesticide of concern**. The amount of time it will take to evaluate all the pesticides of interest is not specified and will be determined through workplan negotiations between the Region and grantee depending on available resources and expertise within the state or tribe.
 2. Take actions (actively manage beyond the label) to reduce or prevent contamination from **pesticides of concern over time**. The amount of time it will take to manage all pesticides of concern is not specified and will be determined through workplan negotiations between the Region and grantee depending on available resources and expertise within the state or tribe.

3. Demonstrate the progress of the management strategy in reducing or maintaining concentrations below reference points

- Enter progress on three-tiered approach into the web-based Pesticide of Interest Tracking System (POINTS).
- Investigate and respond to water resource contamination by pesticides, especially where water quality standards or other reference points are threatened.
- Where appropriate, States and Tribes are encouraged to consult with or coordinate prevention and protection of water resources with other agencies with responsibilities for water resource protection.
- Support implementation of pesticide NPDES permits, such as offering technical assistance to review draft and final permits or outreach and distribution of materials provided by EPA or the State/Tribal Water Agencies to educate pesticide users who may fall under the new permits.
 - **NOTE:** For FY11 - 12, for states/tribes that will need a heavy investment in this area, Regions may significantly reduce or eliminate the workload and performance expectations for other core “pesticides in water” activities listed in the guidance.

Endangered species

- For FY11-13, field program work to support the Endangered Species Pesticide Protection Program is not considered priority, and Regions and the grantee may agree not to include any endangered species activities in the workplan.
 - Funds used to support endangered species activities may be shifted to other pesticide program areas that the region and state agree present a more immediate concern for the state or tribe [e.g., worker safety (including soil fumigation outreach), container/containment, and pesticides in water (including NPDES pesticide permit outreach)].
- Grantees wishing to use funds to support the endangered species protection program may choose from the following activities:
 - Review and comment on draft ES bulletins.
 - Educate current and potential pesticide users and inspectors about the ESP.
 - Support risk assessment and risk mitigation by providing various kinds of data including crop data, pesticide use data and species location data or by commenting on various aspects of an endangered species risk assessment
 - Establish and maintain relationships with local and regional fish and wildlife agencies by providing draft Sec. 18 and 24(c) submittals for review, collaborating on certification and training presentations or developing joint outreach materials.
 - Work with certification and training Staff and Cooperative Extension Services to provide endangered species information for pesticide applicator training

**PESTICIDE STATE/TRIBAL COOPERATIVE AGREEMENT
APPLICATION REVIEW CHECKLIST**

**To be completed by
applicant
and
regional reviewer**

State or Tribe and Lead Agency: _____
Project Period: _____

A. Budget

1. Is there a proposed budget for the following areas if the applicant requests funds in these areas? Does the proposed budget follow the cost categories and include itemized statements per grant guidance?

certification (minimum 50% match)	YES	NO
enforcement (minimum 15% match)	YES	NO
other specific program areas (minimum 15% match)	YES	NO
additional program activities	YES	NO
pesticide management program maintenance	YES	NO
Quality Management Plan review (as appropriate)	YES	NO

Comments:

2. Are the costs reasonable in relation to the projected outputs or outcomes for the following areas?

certification	YES	NO
enforcement	YES	NO
other specific program areas	YES	NO
additional program activities	YES	NO
pesticide management program maintenance	YES	NO

Comments:

B. Narrative Statement

1. Is there a discussion of performance to date regarding areas for which the applicant requests funding? YES NO

Comments:

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2. Has the applicant certified that there are no impediments to carry out the proposed program including that there exists:

Authority to conduct the proposed program?	YES	NO
Authority to accept Federal funds?	YES	NO
Designation as the Lead Agency?	YES	NO

Comments:

3. Are expected benefits to both the Applicant and EPA identified? YES NO

C. General Work Plan Components

1. Has the applicant addressed whether they have or how they will reach the minimum level of attainment as described in the attached guidance:

certification	YES	NO
enforcement YES		NO
worker protection	YES	NO
ground water	YES	NO
endangered species	YES	NO

Accommodate new programs that have not yet reached minimum level of attainment

YES	NO
-----	----

Comments:

2. Has the applicant provided the information contained in the guidance to support requests for funding for additional program activities? YES NO

Comments:

3. Has the applicant provided a schedule for all work plan activities related to:

the specific program areas?	YES	NO
meeting QMP requirements?	YES	NO
additional program activities?	YES	NO

Comments:

4. Is there an evaluation plan which includes a schedule for mid-year (if required) and end-of-year cooperative agreement evaluations? YES NO

Comments:

5. For new applicants, is there a description of the accounting and filing system?
YES NO

Comments:

D. Enforcement

1. Identification of Workyears and Funding

	Federal	State	Total
	_____	_____	_____
Workyears*			
Inspectional	_____	_____	_____
Administrative	_____	_____	_____
Clerical	_____	_____	_____
Analytical	_____	_____	_____
<u>Other</u>	_____	_____	_____
Total	_____	_____	_____

*Include only those workyears actually performing outputs under the cooperative agreement and funded with the dollars indicated above.

- Are work years to be funded identified by type of activity (inspectional, administrative, clerical, analytical, other) and cost?
YES NO

Comments:

2. Is a minimum of 50 percent of the total work years directed to inspectional activities?
YES NO

Comments:

3. Are the budgeted inspectional/analytical work years reasonable in relation to the projected outputs? **Complete output Time Factors Computation Work Sheet attached.**
YES NO

Comments:

4. Has the need for a pesticide enforcement program, of at least one half of a work year,

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been adequately addressed? YES NO
Comments:

5. Has the applicant addressed the eight National issue-specific compliance monitoring activities as set forth by Headquarters (a-h):

(a) Helping to ensure compliance with pesticide cancellations, suspensions and other major regulatory actions. Inspections and other compliance monitoring activities for this priority area will address: YES NO
Comments

(b) Worker protection enforcement: YES NO
Comments

(c) Planning enforcement activities for residue removal regulations YES NO
Comments

(d) Enforcement activities for groundwater protection YES NO
Comments

(e) Enforcement activities for endangered species YES NO
Comments

(f) Section 6(g) information submittal and pesticide recalls YES NO
Comments

(g) Exports YES NO
Comments

(h) Enforcement activities for new C&T regulations YES NO
Comments

Priority setting

6. Has the applicant submitted/referenced a priority-setting plan which addresses the national enforcement priorities and State/Tribal priority problem areas?

YES NO
Comments:

Inspections

7. Has the applicant submitted a completed 5700-33H form for projecting inspection

commitments? YES NO

Comments:

8. Has the applicant agreed to conduct targeted inspections, addressing every element of each type of inspection? YES NO

Comments:

9. Does the applicant commit to follow up on the National Compliance Monitoring Strategies? YES NO

Comments:

10. Does the applicant commit to following EPA's updated Pesticides Inspection Manual when conducting inspections? YES NO

Comments:

E. Quality Assurance

1. Does the applicant have an EPA approved Quality Management Plan (QMP)? YES NO

YES NO

2. Are the following quality assurance practices addressed in the application/QMP:

- (a) Submittal of Updated Quality Assurance Plan; YES NO
- (b) Use of standard analytical methods; YES NO
- (c) Cross-contamination screening program; YES NO
- (d) Performance evaluation sample program; YES NO
- (e) Back up Analysis Procedure; YES NO
- (f) Training of Analytical Chemists; YES NO
- (g) Laboratory Reviews; YES YES NO
- (h) Provisions of Analysis Results; YES NO
- (i) Submission/Retention of Reports; YES NO

Comments:

F. Enforcement Capability

1. Has the State considered using enforcement grant funds toward the development of civil penalty authority? YES NO

YES NO

Comments:

2. For programs with partial or no enforcement capability, has the applicant submitted

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procedures for forwarding inspection reports with suspected violations to EPA?
YES NO

Comments:

3. Does the application provide for an annual written agreement between the State and EPA for the selection, referral, and tracking of significant pesticide use cases under FIFRA sections 26 and 27? YES NO

Comments:

4. Does the application provide as an attachment or reference an up-to-date enforcement response policy (ERP) which the applicant is following? (Note: If EPA has the current ERP, then resubmittal is unnecessary.) YES NO

Comments:

Does the State agree (in the application) to follow the ERP? YES NO

Comments:

5. Is there any reference to procedures for resolving cross jurisdictional issues between States and Tribes? (This is recommended, not required.) YES NO

Comments:

6. Tracking/Management System:

- (a) Does the applicant have a management system for tracking all inspections, violations, and enforcement actions, and rapid identification of the status of a case? YES NO

Comments:

- (b) Is there a tracking system for inspections and enforcement actions in follow up to "major pesticide regulatory actions?" (Could be part of aforementioned system as long as actions taken in follow up to strategies can be identified.) YES NO

Comments:

- (c) For new applicants, is there a description of the system? YES NO

Comments:

- (d) Does the work program address maintenance of tracking documents and associated files and length of time maintained? YES NO

Comments:

G. Reporting

1. Does the application provide for the timely submittal of quarterly Accomplishment Reports (EPA Form 5700-33H)? YES NO
Comments:

2. For new applicants, is there a description of the accounting filing system? YES NO
Comments:

3. Is there an evaluation plan which includes a schedule for timely completion of mid-year (as required) and end-of-year evaluations? YES NO
Comments:

4. Does the application address any unresolved problem(s) identified in the most recent mid-year and end-of-year evaluations? Does the plan for addressing the problem(s) include a schedule for implementation? YES NO
Comments:

5. Does the application address submittal of the annual reporting requirement related to certification accomplishments for the period October 1 to September 30? YES NO
Comments:

EPA APPLICATION REVIEW PROCEDURES

A. General

In determining the amount of assistance to award to each applicant, the Regional Office will consider the applicant's annual allotment, the extent to which the applicant's work plan is consistent with this guidance document, and the reasonableness of the anticipated cost of the applicant's program relative to the proposed outputs or outcomes.

The Regional Administrator will review each cooperative agreement application received and should either approve, conditionally approve, or disapprove the application within 60 days of receipt (40 C.F.R. Section 35.110 - 113).

B. Application Review Panel

The Regional Office should ensure that a copy of the application be provided to the following for review and evaluation:

- Regional Program Office
- Regional Grants Administration Office
- Other Regional Office as appropriate to the Regional procedures

The Region has responsibility for reviewing all applications to ensure adequacy vis-a-vis the grant guidance and applicable cooperative agreement regulations. If a Regional Program Office wishes to consult with Headquarters regarding an application, input can be sought as follows:

- For questions concerning Worker Protection or Certification Programs:
Kevin Keaney, Chief
Certification Worker Protection Branch
Field and External Affairs Division (7506P)
Office of Pesticide Programs
Office of Prevention, Pesticides, and Toxic Substances
phone - 703/305-7666
- For questions concerning Pesticides in Water or Endangered Species:
Daniel Helfgott, Chief
Government and International Services Branch
Field and External Affairs Division (7506P)
Office of Pesticide Programs
Office of Prevention, Pesticides, and Toxic Substances
phone - 703/308-8054

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- For questions concerning other program activities:
Daniel Helfgott, Chief
Government and International Services Branch
Field and External Affairs Division (7506P)
Office of Pesticide Programs
Office of Prevention, Pesticides, and Toxic Substances
phone: 703/308-8054

- For questions concerning Enforcement activities:
Al Havinga, Chief
Agriculture Branch
Agriculture and Ecosystem Division
Office of Compliance
Office of Enforcement and Compliance Assurance
phone: 202/564-4147

C. Technical and Programmatic Review

A technical and programmatic review will be made by the application review panel to determine the merit of the proposed outputs and outcomes in view of the Pesticide Management Goal and the Headquarters and Regional Priorities in this guidance document. In reviewing applications the Regions may wish to use the Pesticide State/Tribal Cooperative Agreement Checklist (attached) as a means of consistently recording whether major, basic administrative requirements have been met. The review should evaluate the pesticide program cooperative agreement application to determine whether:

- The application contains work plans and commitments to ensure that the applicant has, or will by the end of the fiscal year, reach Headquarters and Regional Priorities for the four specific program areas and enforcement priorities.
- The applicant's objectives and expected results for "additional program and enforcement activities" are consistent and compatible with the Pesticide Management Goal.
- The resources (funds and work years) requested are reasonable when compared to the projected outputs and outcomes in the work plan for the specific program areas, for "additional program activities," "pesticide management program maintenance," and enforcement priorities.
- The application for "additional program and enforcement activities" contains environmental measures against which the project/activity can and will be evaluated.

- It is reasonable to expect successful completion of the work plan in view of the applicant’s existing program and enforcement authority, resources, quality system and issues.

D. Time Factor Guidelines

As a result of a survey, EPA, in consultation with SFIREG, has developed the output time factors for use as a guide in evaluating pesticides enforcement cooperative agreement applications with regard to inspection and sample analysis activities. These time factors are to be used for comparing the number of inspectional and/or analytical work hours to be funded with the number of inspections to be conducted and the number of samples to be collected and/or analyzed.

<u>Activity</u>	<u>Work hours to Complete Activity</u>
Agriculture Use Inspection	20
Agricultural Follow up Inspection	20
Nonagricultural Use Inspection	15
Nonagricultural Follow up Inspection	20
Experimental Use Inspection	15
Producer Establishment Inspection	15
Marketplace Inspection	05
Import Inspection	10
Export Inspection	10-15
Applicator License and Records Inspection	05
Dealer Records Inspection	05
Sample Collection and Preparation	05
Sample Analysis	
Residue	25
Formulation	11

The time factor values should take into account all inspectional or analytical time spent to complete an activity, including travel time, document preparation, sample shipment, etc. The work hours should also include the prorated time for administrative activities of inspectors and chemists. Additional time spent by staff other than inspectors or chemists for administrative, case preparation, legal, clerical, and program planning activities time may be charged if the activities are prerequisites to conducting the activity. Only the inspectional and analytical work hours should be used to calculate productivity levels.

Regions will use the time factors as a guide for negotiating and evaluating pesticide enforcement applications. With regard to inspection and sampling activities, the projected number of inspections, samples, and analyses multiplied by the established time factors should

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approximately equal the number of work hours which each State/Tribe requested to complete the projected outputs under the cooperative agreement. The agency considers productivity levels between 85% and 115% of the established standard to be in the acceptable range. It is understood that deviations from these time factors may occur because of differences in travel time, local procedures, etc. To ensure equal treatment of all States/Tribes, a normal work year consists of 1800 hours after allowing for leave and holidays.

E. Administrative Review

The Regional Grants Administration Office will perform an administrative review and evaluation to determine whether the application meets the requirements of the EPA Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments found at 40 C.F.R. Part 31 and regulations for State and Local Assistance found at 40 C.F.R. Part 35. The sections of Part 35, State and Tribal Assistance Grants, where various pesticide grants are mentioned are as follows:

For States

Pesticide Enforcement: sections 35.230 - 35.235

Certification & Training: sections 35.240 - 35.245

Pesticide Program: sections 35.250 - 35.259

For Tribes

Pesticide Enforcement: sections 35.640 -35.645

Certification and Training: sections 35.646-35.649

Pesticide Program: sections 35.650-35.659

At each stage of the evaluation, the applicant may be required to provide further information or to amend the application to satisfy the concerns of the Agency.

Guidelines for Using EPA Form 5700-33H

Every pesticide enforcement cooperative agreement, negotiated between EPA and the state or tribe, must include a work plan, which includes output projections broken down into eleven inspection categories. The work plan must also specify that participating states and tribes are to report back to the Agency, semi-annually, on the actual number of inspections conducted by inspection category, and the resulting enforcement actions, also by standard categories [e.g., civil complaint, criminal action, number of warnings]. EPA Regional Offices are responsible for inputting into the FIFRA and TSCA Tracking System (FTTS) the inspection and enforcement action accomplishments for each state or tribe with a pesticide enforcement cooperative agreement.

EPA Form 5700-33H should be used by states/tribes participating in the FIFRA cooperative agreement program for reporting output projections and accomplishments in the enforcement program. The Accomplishment Report should be accompanied by a narrative portion as described in these guidelines.

To insure uniform reporting, these guidelines and definitions must be followed when completing these forms. Specific guidance on completing the WPS EPA Form 5700-33H is located in Appendix 4a.

A. Reporting Under the Cooperative Agreement

The Environmental Protection Agency strongly encourages states and tribes to provide the Agency with summaries of their **total** yearly pesticide inspection and enforcement accomplishments. The Agency believes that such a total summary will provide a much more accurate picture of both an individual state or tribal inspection and enforcement program, but it will also give a much more realistic national view as well. Total Program Accomplishments includes all activities conducted under the cooperative agreement, including those completed with “state/tribal funds.”

B. Output Projections

Output projections must be submitted in the work plan included with the cooperative agreement application. These numbers represent the state’s/tribe’s annual commitments under the cooperative agreement. EPA Form 5700-33H may be used to report projections.

States should negotiate with their Regional office and commit to conducting an agreed-upon number of federal facility inspections. These would fall under the other categories of inspections listed on the reporting form, but would be conducted at federal facilities. The

number of inspections to be conducted at federal facilities must be negotiated and included in cooperative agreement applications.

States/tribes are not asked to make projections for activities to be conducted outside of the cooperative agreement program.

C. Accomplishments

In order to evaluate performance under the pesticide enforcement cooperative agreement work plan, accomplishments must be reported semi-annually. The accomplishments reported must include inspections conducted, samples collected, and enforcement actions taken. Reports must be submitted to the Regional Office by the state/tribes within thirty calendar days of the mid-point and end of the federal fiscal year. Accordingly, the 5700-33H report is due by April 30 and October 30 of each year.

The following are uniform reporting requirements for reporting accomplishments:

- Inspections should be reported only if an appropriate inspection report is completed.
- The **initial reason** for the inspection **determines** the appropriate inspection **category** for reporting.
- If more than one type of inspection (of the eleven standard inspection categories) is conducted for the same visit, and each inspection is completely documented, then each inspection can be counted as a separate inspection.
- State/tribal enforcement actions resulting from inspections may be reported on Form 5700-33H. This includes enforcement actions for both federal and state/tribal violations.
- Enforcement actions should be reported for the period in which they are **issued**, regardless of when the inspection was conducted.
- Enforcement actions are to be reported under the inspection category heading for the initial inspection which led to the enforcement action.
- Enforcement actions which are not the result of inspections in the field are to be reported in the narrative portion of the report.

See Section D., Inspection Category Definitions, for additional uniform reporting requirements for use and follow-up inspections.

D. Inspection Category Definitions

The eleven standard inspection categories listed on EPA Form 5700-33H are defined, for uniform reporting purposes, as follows:

It is understood that many states/tribes conduct inspections which are not specified as separate inspection categories on Form 5700-33H or defined in these guidelines. The state/tribe should consult with their Regional Office to determine which inspection categories most closely match such inspections. Inspections that do not fall within one of the eleven standard inspection categories of the form should be reported in the narrative portion of the accomplishments report.

Use Inspections

A use inspection may be initiated as an observation of an actual pesticide application or as an inspection following an application. This type of inspection is usually selected using a neutral or routine inspection scheme. Use inspections also include the investigation of the many facets of the use of a pesticide including storing, handling, mixing, loading, and disposal. Section 18 and section 24(c) use inspections will be included in this category for reporting purposes. Uniform reporting requirements are:

- Use inspections are differentiated from for cause inspections by the initial reason for the inspection.
- Use inspections are initiated without a reason to believe that a violation has occurred or is occurring.
- Use inspections remain use inspections even if a violation is encountered.
- A use inspection requiring multiple visits should be reported as only one use inspection even though many sites may be visited.

For example, in a use inspection all of the following sites may be visited: application site, adjoining property, dealer where the pesticide was purchased to review sales records, and place of business of certified applicator to review records. The visits to the dealer and applicator should not be reported as separate inspections if these visits were part of the use inspection.

1. Agricultural Use Inspections

Agricultural use inspections include the inspection of pesticide applications in

conjunction with the production of agricultural commodities as defined in 40 CFR section 171.2(a)(5) as follows:

The term “agricultural commodity” means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

2. Non-agricultural Use Inspections

Non-agricultural Use Inspections include the inspection of non-agricultural pesticide applications.

For Cause Inspections

A For Cause inspection is usually initiated in response to a complaint, damage report, referral, tips, etc. following a pesticide application. Section 18 and 24(c) follow-up inspections will be included in this category for reporting purposes. Due to the potential for harm to human and the environment, it is important that the inspector initiate For Cause inspections as soon as possible after the receipt of an alleged misuse.

Uniform reporting requirements are:

- For Cause inspections are differentiated from use inspections by the initial reason for the inspection because the inspector may be required to visit a number of sites, interview various persons and/or collect a number of samples.
- For Cause inspections are initiated when there is reason to believe that a violation has occurred or is occurring.
- For Cause inspections remain for cause inspections even if a violation is not detected.

3. Agricultural For Cause Inspections

Agricultural For Cause inspections are inspections of a suspected misuse of pesticides in conjunction with the production of agricultural commodities as defined in 40 CFR section 171.2(a)(5).

4. Non-agricultural For Cause Inspections

Non-agricultural For Cause inspections are inspections of suspected misuse of pesticides in all categories of non-agricultural applications.

5. Experimental-Use Inspections

An experimental-use inspection may be an actual observation of an application or a For Cause inspection of records to determine compliance with the experimental-use permit. All inspections must be conducted on site; telephone calls or correspondence reviews will not be counted as inspections.

6. Producer Establishment Inspections

A producer establishment inspection (PEI) is an inspection of an establishment where pesticides or devices are produced and held for distribution or sale, for the purpose of inspecting the facility's products and obtaining samples. While conducting PEIs, product labels, containers and records should be examined for compliance. Inspection of the books and records required by section 8 are also part of these inspections.

7. Marketplace Inspections

A marketplace inspection is an inspection conducted at the retail, distribution, wholesale, or user level for the purpose of determining product registration status, proper storage and display, any labeling violations, any product decomposition, and for collecting official samples. To be counted as an output, the marketplace inspection must be documented in accordance with the provisions set forth in the EPA Pesticides Inspection Manual.

8. Import Inspections

An import inspection is an actual inspection of a product being imported into the United States to determine whether the product is in compliance with FIFRA. Telephone calls and review of import papers in the inspector's office will not be counted as inspections.

9. Export Inspections

Export inspections are considered to be intensive section 8 books and records inspections that will involve the review and collection of a large number of documents and several affidavits

statements by regional/state inspector(s) from responsible company officials. Inspection activities will consist of three (3) parts: pre-inspection document collection and review; on-site inspection activities to review and obtain additional documents; and inspection report writing and organization of inspection documents.

An export inspection is an inspection directed toward those pesticides that are intended for export to determine whether they are prepared and packaged in accordance with the specifications and directions of the applicable foreign purchaser and consistent with the EPA Statement of Policy on the Labeling Requirements for Export Pesticides, Devices, and Pesticide Active Ingredients and the Procedures for Exporting Unregistered Pesticides.

10. Certified Applicator License and Records Inspections

This type of inspection is normally conducted at a pesticide applicator's place of business. The purpose of the inspection is to determine if: (1) the applicator is properly certified and/or licensed, (2) the required records are being maintained, (3) the applicator is applying pesticides only in those areas for which certification has been issued and (4) the records indicate that all applications have been made in compliance with all applicable laws and regulations.

Inspections of non-certified applicators, pest control operators, etc., for the purposes described above should also be reported in this category.

11. Restricted-Use Pesticide Dealer Records Inspections

This type of inspection is conducted on-site at dealers who sell restricted-use pesticides. The purpose of the inspection is to determine if: (1) the dealer is properly licensed or certified (if required) and maintaining the required records and (2) restricted-use pesticides are being sold only to certified applicators or other properly authorized persons by reviewing the dealer's records.

E. Sample Definitions

Physical samples refer to extracted volumes or other substances taken for analysis in determining product formulation, use dilution and residue concentrations.

Documentary samples are samples collected when physical samples of pesticides or devices are not collected. Generally they consist of a complete label, photographs of the pesticide container or the device and all labeling accurately representing what accompanied the formulation or device in the channels of trade.

Since the number of samples is also used for determining laboratory workload and productivity, documentary or non-physical samples should be differentiated so as not to be reported as sample projections on EPA Form 5700-33H. Documentary samples may be projected in the narrative portion to accompany EPA Form 5700-33H, if a state/tribe would like to do so. However, as stated above, only physical samples are required to be projected.

F. Sample Accomplishments

With respect to samples collected, both physical and documentary samples shall be reported.

G. Enforcement Action Category Definitions

Only those enforcement actions initiated as a result of an inspection should be reported on EPA Form 5700-33H.

It is understood that many states/tribes initiate enforcement actions which are not specified as one of the standard categories for enforcement action on EPA Form 5700-33H or defined in these guidelines. The state/tribe should consult with their Regional Office to determine which reporting categories most closely match such enforcement actions. Enforcement actions not readily falling within one of the ten standard categories on the form should be reported in the enforcement action category **“Other Enforcement Actions” and described in the narrative portion of the accomplishments report.**

The eleven standard categories of enforcement actions listed on EPA Form 5700-33H are defined, for uniform reporting purposes as follows:

1. Civil Complaints Issued

Civil Complaints include any written notice proposing a monetary penalty for a violation. These actions should be reported during the period in which they are issued to the respondent.

2. Criminal Actions Referred

Criminal Actions are those legal actions pursued in a court of law. These actions should be reported during the period in which the case is referred to the judicial system (e.g., State Attorney General, District Attorney or County Prosecutor).

3. Administrative Hearings Conducted

An Administrative Hearing is when an alleged violator is required to appear before a state, tribal or federal hearing officer to explain why the violation occurred. For purposes of the 5700-33H form, states/tribes should only report administrative hearings that are not associated with other enforcement actions. These actions should be reported during the period in which the hearing is conducted.

4. License/Certificate Suspension

5. License/Certificate Revocation

6. License/Certificate Conditioning or Modification

These are usually administrative actions taken to further restrict the use of restricted-use pesticides by certified applicators by suspending, revoking or modifying the terms of the applicator's license or certification.

7. Number of Warnings Issued

To be counted, warnings must be a **written notification** pointing out the violation(s) and placing the recipient on notice that further violation may result in additional enforcement action. Warnings should be reported during the period in which the warning was issued.

8. Stop-Sale, Seizure, Quarantine, or Embargo

All official written orders for removing products in violation from sale or use should be reported in this category.

9. Cases Forwarded to EPA for Action

This includes all inspection files that document violations of FIFRA and are forwarded to EPA for enforcement action. Inspection reports of all inspections conducted using EPA credentials must be forwarded to EPA.

10. Other Enforcement Actions

Any other written, verifiable enforcement action initiated by the state, tribe or federal agency that is not comparable to one of the above enforcement action categories.

11. Number of Cases Assessed Fines

This figure indicates the number of enforcement cases resulting in the assessment of a monetary fine (e.g., civil complaint settlements, criminal court actions, or administrative hearing orders).

H. Narrative

Accomplishment Reports should be accompanied by a narrative portion as described below:

1. Inspections Conducted

Inspections which do not fall within one of the eleven standard inspection categories should be reported in the narrative.

2. Enforcement Accomplishments

Enforcement actions not readily falling within one of the standard categories on the form should be reported in the enforcement action category “Other Enforcement Actions” and described in the narrative portion.

Enforcement actions which are not the result of inspections in the field may be reported in the narrative.

Some examples of what would be included under “other enforcement actions” include the following; advisory letters, agreements on remedial action, notices of intent to sue, consent agreements, reports of substandard treatments, treatment correction notices, and stop work order notice.

A “field notice” would be included under the category of “other enforcement actions” (as opposed to the “warning” category) only if it does not meet the definition of a “warning” as described in item number 7.

[Appendix 3b: EPA Form 5700-33H](#)

(<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/11-13guidanceappendix3b.pdf>)

Please note that the form is interactive and requires Adobe Acrobat 8 or higher.

Guidelines for Using WPS EPA Form 5700-33H

WPS EPA Form 5700-33H should be used by states, tribes or territories participating in the FIFRA cooperative agreement program for reporting total yearly WPS inspections and enforcement accomplishments. The Agency believes that such a total summery will provide a much more accurate picture of both an individual state or tribal inspection and enforcement program, but it will also give a much more realistic national view as well.

WPS Agricultural Inspections Enforcement Reporting

Regions must complete and submit WPS EPA Form 5700-33H to Al Havinga, Chief Agriculture Branch by December 31. Other grant accomplishments will continue to be collected on the standard 5700-33H form and reported through the FIFRA and TSCA Tracking System (FTTS). Pesticide Lead Agencies must submit completed WPS EPA Forms 5700-33H biannually to regions.

WPS EPA Form 5700-33H is divided in two portions. Left side of the form is divided in four columns to collect total number of WPS inspections conducted in a reporting period:

WPS Tier I Inspection column – is subdivided in two columns, Use and For Cause to collect total number of WPS agricultural use and For Cause inspections conducted during the reporting period including the number of inspections conducted at facilities claiming Family Exemption.

WPS Tier II Inspection column – is subdivided in two columns Use and For Cause to collect total number of WPS agricultural use inspections and for cause inspections including the number of inspections conducted at facilities claiming Family Exemption.

Total Inspections column is to collect total number of WPS Tier I and Tier II inspections.

Inspections at Facilities Claiming Family Exemption Column is a subset of the WPS Tier I and Tier II to collect data on inspections conducted at facilities claiming family farm exception to provide EPA with better data on the size of this component in the regulated community.

WPS Enforcement Actions –Some Enforcement Action Categories are deleted from the EPA Form 5700-33H because they are not applicable to WPS enforcement. Report total number of enforcement actions taken under the inspection heading (Tier I - Use or For cause, Tier II - Use or For cause).

Right side of the WPS EPA Form 5700-33H is for collecting violations documented during WPS inspections:

Violations during WPS Inspections – Ten WPS Violation Categories are listed in first column. Second column for reporting number of violations. Number of WPS violations is going to be greater than the number of enforcement actions on the left hand side of the form. The goal of this section is to highlight areas of the Rule where compliance difficulties remain, where compliance assistance activities and enforcement targeting may be focused, and used to monitor national trends. Each state in-turn should use this data to feedback into future compliance efforts and future enforcement targeting.

EPA is recommending that all Pesticide Enforcement Agencies provide this information to fulfill our goal.

[Appendix 4b: WPS EPA Form 5700-33H](http://www.epa.gov/compliance/resources/policies/state/grants/fifra/11-13guidanceappendix4b.pdf)

(<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/11-13guidanceappendix4b.pdf>)

Please note that the form is interactive and requires Adobe Acrobat 8 or higher.

Appendix 4c

EPA has issued a revised version of the WPS Agriculture Inspection Guidance contained in Appendix 4c. It can be located at:

<http://www.epa.gov/compliance/resources/policies/monitoring/fifra/wpsinspectionguide.pdf>



December 28, 2004

Risk-Based Inspection Targeting Strategy for Worker Protection Compliance Monitoring Activities

States and tribes should verify compliance with the Worker Protection Standard (WPS) through both routine inspections and inspections targeted to focus on establishments or situations that pose the highest risk to pesticide workers and handlers in agriculture. Both the Office of Enforcement and Compliance Assurance (OECA) Program Element Review (FY2000) and the Office of Pesticide Programs (OPP) National WPS Assessment (FY 2000-2002) revealed that many of the states/tribes did not have an adequate targeting strategy or priority setting process in place for guiding WPS activities. All states and tribes were to have developed such a targeting strategy as part of their original WPS State Implementation Plans (SIP) and compliance monitoring strategies. In light of the limited resources for this program, OECA feel it is essential for states/tribes to revisit their WPS Compliance Monitoring Strategy so their worker protection outreach and compliance monitoring activities are focused on establishments or situations that pose the highest risk to pesticide workers and handlers in agriculture. EPA is suggesting that a targeting strategy focus one-third (33%) of the available resources for WPS routine (neutral scheme) use inspections to assure coverage of the regulated community and the remaining two-thirds (66%) of resources on high risk targets and responding to tips/complaints.

As part of the 2005-2007 Pesticide Enforcement Cooperative Agreement activities for pesticide worker safety, states/tribes must include a written risk-based targeting strategy in your annual pesticide workplan that clearly defines the criteria used for conducting targeted WPS Ag-use inspections. The Agriculture Branch of the Office of Compliance has prepared this risk-based Guidance for targeting worker protection inspections. This is simply a **recommended** approach for targeting worker protection inspections. Use of this particular risk-based strategy is not required, but rather it is provided as an **optional** strategy in developing a WPS inspection targeting strategy. For example, a state/tribe may revise the national risk-based strategy, in order to incorporate specific data available within that state. Existing state/tribal WPS targeting plans also are acceptable if the targeting strategy identifies the establishments and situations in the state or area of tribal jurisdiction that represent the highest risk to pesticide workers and/or handlers and describes how the state/tribe will target those sites for their compliance monitoring activities (Tier I inspections).

A risk-based targeting strategy for WPS inspections could be used by each state, for example, at the beginning of each quarter (or other appropriate time frame) when the state/tribe needs to select targets for worker protection inspections from a broad universe of potential sites. Using the risk-based targeting strategy, a list of 40 potential inspection sites, for example, could be pared down to 20 sites and prioritized based on factors associated with a greater potential for risk.

Each potential site could be run through a risk-based matrix and be assigned a priority level for inspection.

A number of factors should be taken into consideration when developing a risk-based targeting strategy for worker protection inspections. These factors include information concerning:

- pesticide product toxicity
- crop(s) grown
- production activity (level of hand labor)
- potential for worker exposure
- historical problems with product
- previous compliance problems at the site
- the number of workers employed
- establishment type (farm, forest, nursery, greenhouse, labor contractor, commercial applicator)

The significance and type of product toxicity will vary, depending on whether the inspection target audience is for affected workers or pesticide handlers. The type of crop(s) grown and harvest method will help indicate the amount of hand labor involved in harvest activities, and the level of exposure. The degree of worker exposure may also be affected by the total foliage area associated with a particular crop, with a higher degree of exposure presented by crops such as citrus fruits and sugarcane.

Incidents caused by use of a particular product or active ingredient, such as those which may be documented in a state/tribal illness investigation database, can also help prioritize risk-based inspections. Civil violations or notices of noncompliance previously issued against a site, in particular for misuse violations at farm sites, can also be an important factor. The number of workers employed and the type of farm can also indicate the potential degree of worker exposure to pesticides. Greenhouses and nurseries, which require more hand-labor, can pose greater worker exposure conditions than those on forests and farms. In addition, the larger the number of workers employed at these establishments, the greater the potential for workers to be exposed.

Possible Factors to Consider for WPS Inspection Targeting

When developing a risk-based targeting strategy, states/tribes can use the following factors or add factors applicable to local conditions to identify high risk situations. EPA realizes that states/tribes may not have all the types of data needed to plug in to all the factors listed below. In such circumstances states/tribes should use the best information possible and do the best they can with developing some kind of inspection targets. States/tribes may use any of these factors as the basis for their targeting scheme.

1. **ESTABLISHMENT TYPE AND NUMBER OF WORKERS:** Identify the farm type (farm, greenhouse, nursery or orchards) and the number of workers to help estimate the amount of potential use of, and exposure to pesticides at the farm. (States may have some sort of cumulative data on their establishments or should make an effort to start recording information so that it could be used in subsequent years)
2. **HISTORY OF NONCOMPLIANCE:** Identify agricultural operations/sectors with a **history of non-compliance** or enforcement problems (states/tribes should use compliance and enforcement data from their field inspections to identify such areas or should start maintaining information so that it be used in subsequent years to update their targeting strategy and refine their risk-based targets).
3. **PESTICIDE APPLICATION METHODS:** Identify crops/commodities that rely on **pesticide application methods** that have high potential for applicator exposure or exposure through drift such as air-blast spraying, high pressure applications, fogging, or fumigation. Special emphasis should be placed on identifying those situations where these application methods are employed in combination with the use of high-risk pesticides (e.g., air-blast spraying of azinophos-methyl)
4. **HAND LABOR:** Identify crops/commodities that traditionally rely on high **hand labor** inputs in their production and/or harvest practices (e.g., orchard crops and vegetables). Special emphasis should be placed on identifying those crops/commodities with specific cropping or cultural practices that may involve high-risk pesticides being used at times that coincide with labor-intensive practices that result in extensive contact with pesticide treated foliage or surfaces; for example, peach thinning following methyl parathion applications, strawberry harvesting following Captan applications, staking tomatoes following carbamate insecticide applications, or moving nursery/greenhouse material after certain pesticide applications.

[NOTE: States/Tribes should refer to the USDA crop profiles or consult with the County Extension Service for assistance in identification of these situations.]

5. **HIGH RISK PESTICIDES:** Identify crops/commodities whose current production practices relies heavily on the use of **high risk pesticides** (e.g., signal word, toxicity category I & II pesticides, fumigants). The significance and type of product toxicity will vary, depending on whether the inspection's target audience is for affected workers or pesticide handlers. The toxicity of the product's active ingredient will have a greater risk impact for workers (REI is based on the active ingredient), whereas the toxicity of the end-use product will have a greater risk impact for handlers (PPE requirements are based on the acute toxicity of the end-use product). Special emphasis should be placed on identifying those situations where products with the most stringent WPS protections (e.g., products that have label requirements for respirators or double notification) are used .

Using the above factors, the following WPS Risk-Based Inspection Targeting Form was

developed as an example for state use in prioritizing WPS use inspections. Use of these factors obviously necessitates that the state have information in these areas. If a state does not have any information on one particular factor, that factor could be eliminated from the risk-based matrix if necessary. The use of this form by a state/tribe is not required and only recommended.

WPS Risk-Based Inspection Targeting Form Instructions

Each potential inspection site is listed along the vertical axis of the matrix. The five factors outlined above, associated with risk for use-based inspections, are listed horizontally across the top of the risk-based matrix as the headings for the columns. The definitions of each of these five factors and their use, as part of the Risk-Based Matrix, are outlined below. Each potential site for a Use inspection should be rated under each factor, based on a priority rating from 1 (lowest) to 5 (highest) as follows.

- Establishment Type/Number of Workers: Represents the type of establishment targeted for inspection and/or the potential number of workers employed over the year. The establishment type will also help dictate the amount of worker exposure to pesticides at the farm. Greenhouses and labor contractors should be rated 5, nurseries and commercial applicators rated 4, orchards 3 and other farm types as 2 or 1. Establishments using high number of workers should receive a high priority regardless of the type of establishment, since a larger number of workers at the site indicates a potentially higher exposure rate.
- History of Non Compliance at Site : Check the state data base or files for any enforcement actions taken against the potential inspection site within the last 5 years. A combination of previous warning letters, criminal or civil administrative enforcement actions and other enforcement actions taken against an agricultural employer, Farm Labor Contractor, or commercial handler employer by federal or state agencies for pesticide violations should be considered. Accordingly, a site with 5 or more separate historical enforcement actions the weight should be 5, for four separate actions the weight should be 4, for three actions the weight should be 3, for two actions the weight should be 2, for one action the weight should be 1 and if no compliance history exists the weight should be 0.

For clarification, any enforcement action is counted as 1 for the purpose of this targeting if it results from a single site visit/inspection at an establishment (including multiple visits at the same site for a single state case number) at which one or more WPS violations were detected. The state/tribe should also consult their WPS Enforcement Response Policy (ERP) (or EPA WPS ERP in the absence of a state-specific one) in deciding how major (for example, no safety training, no PPE, entry within REI, etc.) and minor (for example, application records missing an item, decontamination site out of towels, etc.) violations factor into this counting and history of noncompliance.

- Crop(s) Grown/Harvest Method : Identify the crops produced at the site. You can obtain

this information by reviewing the geographical area, consulting with a state inspector with field experience, or contacting the county extension service or state grower and commodity organizations. The type of crop produced will determine whether hand labor or machines are used for harvesting. Fruit, flowers, and vegetables are associated with intensive hand labor while grain crops are associated with machine labor. If harvesting is done completely by hand at the site, then it should be rated 4-5, if a combination of harvesting by hand and machinery is used at the site, it should be rated 2-3, if harvesting was done completely with machinery at the site, then it would be rated 1.

- Methods of Application : Identify crops/commodities that rely on **pesticide application methods** that have high potential for applicator exposure or exposure through drift. Aerial, fumigation, misting, fogging methods, air-blast spraying or high pressure applications of pesticide application should be rated 4-5, truck mounted low pressure spraying should be rated 2-3 and using back pack spraying or irrigation application method or granular formulations, should be rated 1. (Rate other methods of applications according to their potential for applicator exposure or extent to which pesticides drift from or rest outside of target crop)
- Historical Incidents With The Product's Active Ingredient: Based on the total number of incidents reported within the state for specific pesticide product(s) used on a targeted site during the past year. An "incident" is classified as a reported human illness or contamination of the environment resulting from use of the pesticides. If five or more reported incidents were reported, the weight should be 5, for 4 incidents the weight should be 4, for 3 incidents the weight should be 3, for 2 incidents the weight should be 2, with one reported incident the weight should be 1 and for no incidents reported within the past year the weight should be 0. A historical problem with a specific product that affected many workers at once could also be rated as 5.
- Product Toxicity : If possible, identify the product used at the site. If more than one product is used, for purposes of the matrix, base the classification on the product with the highest toxicity classification. Tox I products would be rated 4 or 5, Tox II products would be rated 2 or 3 and Tox III and Tox IV products would be rated as 1.

Routine inspections should include a variety of sizes of operations (small, medium, large), crop sites and pesticide uses, to assure overall coverage within a state/tribe. Some inspections should be conducted at family run establishments, some of Farm Labor Contractors, and some of commercial handler establishments. Inspections may also be conducted during worker and handler training programs to assure compliance with the regulation.

EPA believes that grower/employer compliance with the WPS is best assured through continued monitoring by use inspections. States/tribes should maintain a WPS Inspection Targeting Scheme that revisits all applicable establishments, even if in full compliance previously, on a regular schedule every 5-8 years (depending on state budget, inspector workforce, number of establishments, and competing priorities). Compliant facilities need not be

re-inspected more than once every 5 years, unless they have a previous history of noncompliance. If a state/tribe has reached a stage after a number of years conducting WPS compliance monitoring at which all potential establishments have been inspected under 5 years, then that state/tribe should seek advice and assistance from their appropriate EPA Regional office for assistance in WPS inspection targeting, or lower their initial WPS inspection commitments in exchange for related compliance assistance activities.

Reporting to EPA

A written risk-based WPS Inspection Targeting Strategy must be included in all state/tribe workplans for FY 2005. This Strategy may be an existing plan previously used by the state/tribe as provided formerly in the revised WPS SIP, incorporating many of the factors identified above. Alternatively, a state/tribe may create a new Strategy modeled after the Form herein provided. Subsequently, as the state/tribe utilizes your Targeting Strategy to target WPS inspections, a copy of this decision-making and/or a copy of the completed Form herein suggested may be provided to EPA as part of your state/tribe accomplishment report to be provided semiannually to annually (depending on the state/tribe reporting agreement with your EPA Region).

EPA has attached the Risk-Based Targeting Form created in Excel that has the above formula embedded to simplify its use. When you replace the “0” in each column with the correct priority rating (1 lowest to 5 highest) the total score will appear. The Excel filename is “WPS Risk-Targeting Form. xls” and is a separate file. If you need a copy of the file, please contact Amar Singh (OECA/OC) at 202-564-4161 or singh.amar@epa.gov. If you do not have Excel, fill out hard copy of the form (included below) and manually calculate each score.

RISK-BASED INSPECTION TARGETING FOR WPS INSPECTIONS

STATE /COUNTY _____

FISCAL YEAR _____

DATE OF REPORT _____

EACH SITE SHOULD BE RATED UNDER EACH FACTOR BASED ON A PRIORITY RATING FROM 1 (LOWEST) TO 5 (HIGHEST)

Site Name	Establishment Type	History of Non Compliance at Site	Crop(s) Grown/Harvest Method	Methods of Application	Historical Incidents with the Products Active Ingredient	Product Toxicity	Total Score
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							

FIFRA Worker Protection Standard
End of Year Case File Review - FY _____ Reporting Period

1	REGIONAL OFFICE:	
	STATE/TRIBE/TERRITORY PESTICIDE LEAD AGENCY:	
	File Reviewer:	

2 Use Inspection Information		
a.	Facility Name/City:	
b.	Type of agriculture establishment inspected: (✓) <input type="checkbox"/> Farm <input type="checkbox"/> Greenhouse <input type="checkbox"/> Nursery <input type="checkbox"/> Forest Operation <input type="checkbox"/> Other <input type="checkbox"/> Unable to determine. If so, why:	
c.	The inspection was conducted of the - - (most applicable)	
	FIFRA § 14(a)(1) <input type="checkbox"/> Commercial Applicator hired by the ag establishment. <input type="checkbox"/> Commercial Applicator place of business.	FIFRA § 14(a)(2) <input type="checkbox"/> The agricultural establishment employer(s) <input type="checkbox"/> A Private Applicator <input type="checkbox"/> A "For-hire" Applicator hired by the ag establishment.
	Applicator business name/city if different from ag establishment where inspection took place :	Applicator business name/city if different from ag establishment where inspection took place:
d.	Was inspection - -(✓) <input type="checkbox"/> Routine (also known as Random, Planned or Targeted) <input type="checkbox"/> For Cause (if this was a Misuse inspection, check For Cause and go to section 3(b). A comprehensive inspection should have been conducted.) <input type="checkbox"/> Other:	
f.	Was inspection conducted with EPA?	<input type="checkbox"/> Yes <input type="checkbox"/> No

3.	For Routine Use Inspection
a. (✓)	<input type="checkbox"/> Tier I Inspection conducted <input type="checkbox"/> Tier II Inspection conducted
b. (✓)	<input type="checkbox"/> Completed all of the WPS data elements successfully? <input type="checkbox"/> Completed majority of the WPS data elements successfully? <input type="checkbox"/> Not Completed the majority of the WPS data elements successfully?
c.	Y/N <input type="checkbox"/> Were farm workers interviewed?

3.	For Routine Use Inspection	
	Y/N [<input type="checkbox"/>] Were handler workers interviewed?	
d.	If no workers were interviewed, what Rationale was provided? (✓) <input type="checkbox"/> None were present on the facility at the time of inspection. <input type="checkbox"/> Employer did not provide or allow inspector to conduct interviews with workers upon request. <input type="checkbox"/> Workers did not wish to be interviewed. <input type="checkbox"/> Inspector was not able to interview workers because of language. <input type="checkbox"/> Other:	
e.	Date of inspection --	

Yes	No	Unable to Determine	4. Case Development Information
			a. Was inspection pre-announced?
			b. Were Inspector Credential presented?
			c. Was a Notice of Inspection provided?
			d. Was a Receipt for Samples needed?
			Was it provided?
			e. Were copies and/or photos of the labels obtained during inspection?
What were the pesticide products/EPA Reg. No(s). identified in the inspection? 1. 2. 3.			
			f. Were photos taken during inspection of other WPS elements?
			g. Were statements collected to gather information?
			h. Was an inspection checklist used adequately?
			i. Was an inspection report completed?
			j. Was this Inspection referred to your Regional Office by the SLA?

5. ENFORCEMENT	
a. Did this inspection result in - - (✓)	
	an enforcement action for WPS-specific noncompliance?
	an enforcement action for another type of violations?
	a no-action, case closure (no violations)?
	a pending final determination?
	Unable to determine.

5. ENFORCEMENT	
b. If enforcement was taken, what was it?—provide date of issuance	
	Warning letter ---
	Stop Use / Quarantine ---
	Civil action ---
	Criminal action ---
	Administrative Hearing ---
c. Was a penalty issued? Yes[___]No[___] If yes, \$ _____	
d. Is the case settled regardless of when the inspection occurred? Yes[___]No[___]	
e. Is the enforcement consistent with the applicable enforcement response policy? Yes[___]No[___] If no, why?	
f. List Pesticide Name /EPA Reg. No(s). cited with violation(s): (1) (2) (3)	
g. Summary of violation(s): (all as applicable)	
<input type="checkbox"/> Pesticide Safety Training <input type="checkbox"/> Pesticide Applications <input type="checkbox"/> Central Posting <input type="checkbox"/> Notice of Application <input type="checkbox"/> Entry Restrictions <input type="checkbox"/> PPE <input type="checkbox"/> Mixing/loading, Application equipment & Applications <input type="checkbox"/> Decontamination/supplies <input type="checkbox"/> Pesticide Exposure Incidents <input type="checkbox"/> Information Exchange - Commercial Applicators & Growers <input type="checkbox"/> Emergency Assistance <input type="checkbox"/> Employee Refusals <input type="checkbox"/> Retaliation	

6. Reviewer's Comments	
You Rate the Report overall as? [___]High [___]Medium [___]Low	
Why?	
Other Comments:	

ENFORCEMENT PRIORITY-SETTING GUIDANCE

An effective priority-setting process will enable State Lead Agencies (SLAs) to concentrate their compliance monitoring, enforcement programs, and training on specific pesticide production, distribution and use activities which pose the greatest risk to health and the environment. In applying for pesticide enforcement cooperative agreement monies, states and tribal priority-setting plans will be expected to include: 1) a list of the priorities; 2) an explanation of the criteria for establishing priorities; 3) a review of information sources and listing of problem areas; 4) a ranking of problem areas to be dealt with; and 5) a distribution of the available resources to the problem areas based upon the magnitude of the problem. The required content and the recommended format are discussed below.

Once a priority-setting plan is approved by EPA, SLAs need not resubmit the entire plan again as part of their cooperative agreement applications. They only need to reference the plan, include any amendments to the plan, and resubmit annually an updated list of priorities. However, a complete plan must be submitted every 5 years.

I. CONTENT

The priorities to be addressed by the SLA must include the National Enforcement Priorities. Applicants should refer to Section 3 of this guidance for the current priorities.

States must evaluate these priorities as part of their own priority-setting process and assign resources to them according to their ranking in the state's overall priority-setting scheme. The state priority-setting plan should identify the type of inspections to be conducted in support of the national priorities, and why these categories were selected. Additional non-inspectional activities addressing the national priorities should be identified as well.

The priority setting plan should provide an explanation of the criteria used for setting priorities and how these criteria are weighed in establishing priorities (for example, the criterion of harm to human health would, likely weigh more than property damage).

The SLA priorities should be based on the following criteria, in addition to any other criteria pertinent within the state. The greatest emphasis should be placed on items "a" and "b.":

- A. Degree of harm to human health or the environment;
- B. Where violations are occurring
- C. Followup to federal priorities or state regulations or requirements.
- D. Economic loss (optional criteria)
- E. Environment indicators, such as relevant ecological studies (optional)
- F. Maintaining a Regulatory Presence (optional)

Appendix 5

It is recognized that a sizable number of inspections throughout the course of the fiscal year will be devoted to following up on tips and complaints, and unforeseen emergencies. The criteria above should also be used in prioritizing followup to tips and complaints, using primarily criteria A and B as the determining factors. (Follow-up to tips, complaints and referrals could conceivably be listed as a priority.)

A. Degree of harm: SLAs should take into account the degree of harm to human health or the environment, whether actual or potential, when setting priorities.

With regard to this criterion, SLAs should use the National FIFRA Enforcement Response Policy and the FIFRA Worker Protection Standard Penalty Policy - Interim Final as guidelines. These can be found at the following website:
<http://es.epa.gov/oeca/ore/tped/toxpest.html>.

It is important to factor in the degree of harm associated with the violation even if there is a low or declining number of violations recorded. For example, 8-10 violations with a low level of harm may be less of a priority than 2-3 violations with a higher level of harm.

B. Identification of violations: For new priority-setting submissions, SLAs will be expected to submit information on the types of violations and where violations are occurring. Once this information is systematically evaluated, SLAs will be able to use it in concert with degree of harm to the environment and human health as a basis for determining priorities. In the meantime, SLAs should use the full range of violations data currently at their disposal.

The SLA should specifically consider what if any, recommendations they should make with regard to needed changes in the certification and training programs to followup on trends in the violations data.

C. Follow-up to federal priorities or state regulations or requirements: EPA national enforcement priorities for pesticides, state regulations, public pressure or political exigencies may alter the priorities arrived at in A, B and C, and should be accounted for in the priority-setting plan, if possible.

D. Economic loss (optional): Economic loss due to a pesticide violation may be measured by dollars or by other criteria. Whatever method chosen to measure economic loss must be explained in the priority-setting plan.

E. Environmental indicators When available, relevant ecological data or environmental assessments should be factored into the priority-setting procedure. A groundwater survey may reveal, for example, high levels of groundwater contamination from pesticides used in center-pivot systems.

F. Maintaining a Regulatory Presence: Certain inspectional activities, such as marketplace or producer inspections, may have a low violations rate and are seldom driven by complaints. They are therefore more difficult to justify in the priority-setting process. A criteria for determining priorities, therefore, can be based on a state's need to maintain a minimum enforcement presence in selected parts of the pesticide community.

II. Format

The recommended format for every priority setting plan is outlined below.

FY(yr) Priority-setting Plan for (insert name of grantee)

Priority Areas - For each priority, address the following:

1. Identify the priority area.
2. Provide a review of information sources, i.e., a review of violations data, toxicity data, tips and complaints, etc., that were used in establishing priorities.
3. Discuss why the area was identified as a priority, examples include: 50% of the violations were found here or there was a high degree of actual or potential harm to human health or the environment or both.
4. Identify the number of inspections to be conducted to followup on this priority area. Also state under which categories (e.g., ag. use, etc) these inspections fall and why these categories were selected. Identify non-inspectional and/or training enforcement activities, if any, (i.e., enforcement fact sheets to be distributed) as followup to a given priority area.

Pesticide Enforcement Grant Outcome Measure No. 1 - Repeat Violator

March 2005

Repeat Violator Measure: Percent of recipients of enforcement actions receiving subsequent enforcement actions.

$$\frac{\text{Regulated Entities Receiving Subsequent Enforcement Actions}}{\text{Universe of Entities Receiving Enforcement Actions}}$$

Explanation of the Measure: The purpose of this measure is to quantify the effect of enforcement actions on the subsequent behavior of the violator. While some grantees may conduct follow-up inspections of previous violators in certain circumstances, the measure does not presume that follow-up inspections are grantee policy; the decision whether to conduct follow-up inspections is determined by the grantee. The data used to calculate the percentage of repeat violators is collected through use of the Pesticide Enforcement Outcome Measure Reporting Form (attached).

Definitions

Enforcement action is defined in EPA's Guidelines for Using EPA Form 5700-33H (relevant portions attached). The types of enforcement actions included in all the measures should be identical. State/Tribes are encouraged to report total enforcement actions, not just enforcement actions funded by EPA Pesticide Enforcement Grant funding, on form 5700-33H.

Regulated entities receiving subsequent enforcement actions - Those entities to whom an enforcement action was issued for a violation of federal, state or tribal pesticide laws or regulations and who also receive a subsequent enforcement action stemming from another documented instance of non-compliance with any of those laws or regulations within three years from the date of the initial enforcement action. (The date of the initial enforcement is as determined by each grantee, consistent with its enforcement policies/procedures). In determining what entity received a subsequent enforcement action (i.e. pest control company vs. pest control operator; branch office vs. parent company) each grantee should report according to how each answers this question under its local regulations or enforcement response policies.

Universe of entities receiving enforcement actions is defined as the total number of entities receiving enforcement actions.

Limitations on the data:

The measure must assume wide flexibility in how a grantee administers its programs, as, for example, when and whether it conducts follow-up inspections of previous violators, how it determines whether an entity that receives a subsequent violation is the same as an entity receiving a previous violation, what its enforcement response policies are, the scope and impact of compliance assistance, education and other prevention activities

outside of the compliance monitoring and enforcement process, and the scope of pesticide regulation and ability to proceed to enforcement action. This flexibility, however, results in reducing significantly the utility of using the data generated by this measure in making grantee-to-grantee comparisons. The measure will, therefore, be most useful for the generation of grantee-specific multi-year rolling average baselines against which year-to-year progress can be measured, and when aggregated at the national level using multi-year rolling averages to identify broader program trends.

Pesticide Enforcement Grant Measure No. 2 - Complying Actions

March 2005

Complying Action Measure: Percent of complying actions taken as a result of grantee compliance monitoring and enforcement actions.

Formula:
$$\frac{\text{Number of Enforcement Actions Resulting in Verified Compliance}}{\text{Total Number of Enforcement Actions}}$$

Explanation of Measure: The purpose of this measure is to quantify the impact of grantee compliance monitoring and enforcement on obtaining compliance with pesticide laws. Bringing individuals into compliance is a primary goal and outcome for compliance activity. This outcome is being measured by determining the percent of enforcement actions that the grantee has verified have resulted in correction of the violations that were the subject of enforcement actions. The data used to calculate this measure is collected through use of the Pesticide Enforcement Outcome Measure Reporting Form (attached).

Definitions:

Enforcement Action - as defined in the guidelines in Cooperative Agreement for completing EPA Form 5700-33H. The types of enforcement actions included in all the measures should be identical. State/Tribes are encouraged to report total enforcement actions, not just enforcement actions funded by EPA Pesticide Enforcement Grant funding, on form 5700-33H.

Enforcement Actions Resulting in Verified Compliance - The violations that were the subject of the enforcement action have been abated, including actions have been taken such that a repeat violation is not to be expected. This usually means that whatever was the cause for the violation has been addressed. For example, if ignorance of the legal requirements resulted in a violation, correction may be through verified training about or reading the requirements. Or, if a misuse of a pesticide occurred because the applicator did not have the appropriate equipment, the corrected enforcement action may have the applicator obtaining the appropriate equipment and learning how to use it. This measure recognizes that more than one enforcement action can result from a single inspection.

Other forms of compliance include, but are not limited to:

- . Corrected advertising
- . Correction of formulation - adulterated or exempt product
- . Registration of product
- . Disposal of cancelled/banned product
- . Applicator Certification & Training

- . Removal/clean up in case of structural misapplication
- . Worker Protection Standard - Central posting location provided, PPE
- . Registration of company

Verified - The standard for verification will be a practical standard such as a signed, written documentation or an inspection, including actions taken observed at the time of the original inspection. Some grantees, because of falsification provision of records, require signed documents as a form of verification from the violator. Additionally, some violations may be more difficult than others to verify as corrected. Grantees need to determine the most appropriate verification method (e.g., violator provides to grantee information on the measure taken to prevent future violations). While this measure does not require follow-up inspections, all violations for the enforcement action must be verified as corrected in order to be counted under the measure.

Examples of actions that might be demonstrated through documents include:	
Violation	Verified Compliance
Application records are not complete	The new format can be sent in to the State Lead Agency
Illegal disposal of pesticide product	Third party verification such as invoicing for disposal is submitted
No backflow prevention device	Third party verification by installer of device is received
Unregistered pesticide	Registration is completed
Uncertified/unlicensed applicator	License or certification is granted
Uncertified/unlicensed applicator	Written agreement is signed to not engage in pesticide applications
Untrained agricultural workers	Training records signed by employees are received
Pesticide application information is not given	A plan for providing application information is received
No central location posting or application information for Worker Protection Safety	Submit photograph of central location and application log

Limitations on the data:

The measure must assume wide flexibility in how a grantee administers its programs, as, for example, when and whether it conducts follow-up inspections of previous violators, how it determines whether an entity that receives a subsequent violation is the same as an entity receiving a previous violation, what its enforcement response policies are, and the scope of pesticide regulation and ability to proceed to enforcement actions. This flexibility, however, results in reducing significantly the utility of using the data generated by this measure in making grantee-to-grantee comparisons. The measure will, therefore, be most useful for the generation of grantee-specific multi-year rolling average baselines against which year-to-year progress can be measured, and when aggregated at the national level using multi-year rolling averages to identify broader program trends.

Pesticide Enforcement Grant Measure No. 3 - Efficiency Measure
March 2005

Efficiency Measure: Cost of conducting inspections that identify violations.¹

Formula:

$$\frac{\text{EPA Pesticide Enforcement Grant Funding} + \text{Grantee Pesticide Enforcement Funding}}{\text{Total Number of Enforcement Actions}}$$

Example:

In a given year, Grantee A receives \$350,000 in EPA Pesticide Enforcement Grant Funding. Grantee A also contributes \$1,900,000 from general revenue and fees toward pesticide enforcement and has 200 enforcement actions.

$350,000 + 1,900,000 = \$2,250,000$ Total program cost

$\$2,250,000 / 200$ enforcement actions = \$11,250 Average cost per enforcement action

Explanation of Measure: The purpose of this measure is to quantify the efficiency of an inspection program to find violations, i.e., the efficiency of the program to conduct or target inspections that identify violations. The measure calculates the average cost of such inspections. Since in FIFRA, an inspection is almost always required for an enforcement action to be taken, and an enforcement action is a documented identification of a violation, the measure uses the number of enforcement actions as an indicator or substitute for the number of inspections for which violations were identified. As defined, enforcement actions encompass a broad array of actions taken by the State Lead Agency (SLA) or Tribe - including several categories of non-penalty actions. The measure will encourage better targeting, cost reductions and increased documentation of violations. It is not intended or expected to encourage penalty actions.

Since EPA pesticide enforcement grant funding only represents a portion of the total program costs, state/tribal contributions are also included in the measure.

The data used to calculate this measure is collected through use of the Pesticide Enforcement Outcome Measure Reporting Form (attached).

¹ This measure may be reported in the inverse - inspections identifying violations per dollars spent. This is the standard formulation of an efficiency measure and is, for example, how this measure is reported in the Program Assessment Rating Tool (PART) administered by the U.S. Office of Management and Budget. Also, as stated in the explanation to this measure, “inspections identifying violations” is being treated as equivalent to “enforcement actions.”

Definitions:

Enforcement Action - as defined in the guidelines in Cooperative Agreement for completing form 5700-33H. The types of enforcement actions included in all the measures should be identical. Grantees should report total enforcement actions, not just enforcement actions funded by EPA Pesticide Enforcement Grant funding, on form 5700-33H.

EPA Pesticide Enforcement Grant Funding - Funds provided to grantees for pesticide enforcement and compliance monitoring. EPA Regional Offices will provide these figures. The total must be broken out to include funds identified as “base enforcement”, “worker protection”, “enforcement discretionary” and “lab equipment” funding. Funds provided to grantees for PREP, PIRT, and laboratory support for the antimicrobial testing program are not to be reported by the Regional Offices.

Grantee Pesticide Enforcement Funding - Each grantee will need to identify its financial contribution toward pesticide enforcement and compliance monitoring. This may include all staff time and overhead expenses associated with targeting and conducting inspections as well as case development and penalty assessment. It may also include training of inspectors and staff. Support for state/tribal pesticide laboratories for equipment and payroll costs of staff who analyze samples collected during investigations leading to enforcement actions should also be included in the grantee’s total funding.

Recognizing that, during an inspection, it is very common to pull samples, interview, check for the proper applicator licenses, and give direction on future compliance (compliance assistance), the costs associated with these activities should be included in the Grantee Pesticide Enforcement Funding total. When practical, the payroll for staff, or expenses associated with compliance assistance activities such as conducting seminars or public meetings with regulated industry, providing remedial training for violators, or conducting compliance assistance visits/workshops should not be included in the Grantee Pesticide Enforcement Funding total. The total figure also should not include payroll costs or expenses for staff involved with pesticide program (non-enforcement) activities.

U.S. EPA acknowledges grantees without cost accounting systems in place may have difficulty calculating this figure. For those grantees without a system in place, you should work with staff in your financial service organizations to determine a methodology for capturing these costs. This methodology should be documented and you should use the same approach for arriving at pesticide enforcement total costs each year.

Limitations on the data:

The measure must assume wide flexibility in how a grantee administers its programs, as,

for example, how it determines whether an entity that receives a subsequent violation is what its enforcement response policies are, the scope and impact of compliance assistance, education and other prevention activities outside of the compliance monitoring and enforcement process, the scope of pesticide regulation and ability to proceed to enforcement actions, what cost accounting process it uses for this measure, and its ability to accurately account for the total resources devoted to enforcement and compliance monitoring versus other program activities. This flexibility, however, results in reducing significantly the utility of using the data generated by this measure in making grantee-to-grantee comparisons. The measure will, therefore, be most useful for the generation of grantee-specific multi-year rolling average baselines against which year-to-year progress can be measured, and when aggregated at the national level using multi-year rolling averages to identify broader program trends.

9EPA Total _____

Attachment

Excerpt from the GUIDELINES for USING EPA FORM 5700-33H; April 2004 edition

G. Enforcement Action Category Definitions

Only those enforcement actions initiated as a result of an inspection should be reported on EPA Form 5700-33H.

It is understood that many States/Tribes initiate enforcement actions which are not specified as one of the standard categories for enforcement action on EPA Form 5700-33H or defined in these guidelines. The State/Tribe should consult with their Regional Office to determine which reporting categories most closely match such enforcement actions. Enforcement actions not readily falling within one of the ten standard categories on the form should be reported in the enforcement action category **“Other Enforcement Actions” and described in the narrative portion of the accomplishments report.**

The eleven standard categories of enforcement actions listed on EPA Form 5700-33H are defined, for uniform reporting purposes as follows:

1. Civil Complaints Issues

Civil Complaints include any written notice proposing a monetary penalty for a violation. These actions should be reported during the period in which they are issued to the respondent.

2. Criminal Actions Referred

Criminal Actions are those legal actions pursued in a court of law. These actions should be reported during the period in which the case is referred to the judicial system (e.g., State Attorney General, District Attorney, or County Prosecutor).

3. Administrative Hearings Conducted

An Administrative Hearing is when an alleged violator is required to appear before a State, Tribal or Federal hearing officer to explain why the violation occurred. These actions should be reported during the period in which the hearing is conducted.

4. License/Certificate Suspension

5. License/Certificate Revocation

06. License/Certificate Conditioning or Modification

These are usually administrative actions taken to further restrict the use of restricted-use pesticides by certified applicators by suspending, revoking or modifying the terms of the applicator's license or certification.

7. Number of Warnings Issued

To be counted, warnings must be a **written notification** pointing out the violation(s) and placing the recipient on notice that further violation may result in additional enforcement action. Warnings should be reported during the period in which the warning was issued.

8. Stop-Sale, Seizure, Quarantine, or Embargo

All official written orders for removing products in violation from sale or use should be reported in this category.

9. Cases Forwarded to EPA For Action

This includes all inspection files which document violations of FIFRA and are documented and forwarded to EPA for enforcement action.

10. Other Enforcement Actions

Any other written, verifiable enforcement action initiated by the state, tribe, or federal agency that is not comparable to one of the above enforcement action categories.

11. Number of Cases Assessed Fines

This figure indicates the number of enforcement cases resulting in the assessment of a monetary fine (e.g., civil complaint settlements, criminal court actions, or administrative hearing orders).

H. Narrative

Accomplishment Reports should be accompanied by a narrative portion as described below:

1. Inspections Conducted

Inspections which do not fall within one of the eleven standard inspection categories should be reported in the narrative.

2. Enforcement Accomplishments

Enforcement actions not readily falling within one of the standard categories on the form should be reported in the enforcement action category “Other Enforcement Actions” and described in the narrative portion.

Enforcement actions which are not the result of inspections in the field may be reported in the narrative.

Some examples of what would be included under “other enforcement actions” include the following; advisory letters, agreements on remedial action, notices of intent to sue, consent agreements, reports of substandard treatments, treatment correction notices, and stop work order notice.

A “field notice” would be included under the category of “other enforcement actions” (as opposed to the “warning” category) only if it does not meet the definition of a “warning” as described in item #7.

Guidance for the Pesticide Enforcement Grant Outcome and Efficiency Measures Program Assessment Rating Tool (PART) measures

These PART measures are expected to and should receive heightened scrutiny and use in determining the success and value of the pesticide enforcement grants. These measures are high profile in that they are expected to be scrutinized closely by EPA and OMB managers. This guidance should be used with the PART measures definitions and explanatory guidance issued March 2005, attached.

General Guidance:

To be truly effective measures and to correctly describe a grantee's entire pesticide enforcement program, the numerators and denominators in each of the three PART measures need to reflect total enforcement program reporting, not simply reporting of inspection and enforcement activities conducted under the pesticide enforcement cooperative agreement. A clear indicator of this can be found in the following example using PART Measure Number 3 - Efficiency.

State A reports their pesticide enforcement program is funded at \$500,000, and EPA provides \$200,000 in grant funding. The State reports, on EPA Form 5700, that they had 500 [state & grant] enforcement actions throughout the year. The measure is calculated as follows:

$$\$500,000 + \$200,000 = \$700,000/500 = \$1400$$

The "Cost of conducting inspections that identify enforcement actions is \$1400.

State B also reports that their pesticide enforcement program is funded at \$500,000, and EPA provides \$200,000 in grant funding. The State reports, on EPA Form 5700, that they had 100 [grant only] enforcement actions throughout the year. The measure is calculated as follows:

$$\$500,000 + \$200,000 = \$700,000/100 = \$7000$$

The "Cost of conducting inspections that identify enforcement actions is \$7000.

From an efficiency standpoint, State A would appear to be more effective than State B, on a cost basis, in identifying violators, even though this may not actually be the case because State B is not reporting all enforcement program accomplishments.

In order for the Agency to have a sense of the underlying logic behind the data reported by grantees, at least every year for the early years of the collection of these data, project officers (PO's) should look at and document in the end-of-year report the following:

Data quality:

- Is the summary data being reported traceable to individual state or tribal inspection reports or case files such that, for example, the summary data can be verified by looking

- at inspection and enforcement reports?
- What is the system for assuring that the summary data accurately represents what is in the reports submitted to EPA?
- Did the grantee correctly apply the measure definitions in reporting the data? For example, are they using the enforcement action category definitions as defined by the Guidelines for Using EPA Form 5700-33H, attached to the PART measure definitions?
- Is the grantee reporting all enforcement accomplishments, both grantee funded and those funded by EPA grant funds?

For measures 2 and 3, the total number of enforcement actions will be that reported by the grantee on EPA Form 5700-33H.

Program policies and practices that may affect the numbers:

As stated in the measure definitions, the measures overlay many variations among grantees in how they administer their programs. It is those variations that are expected to make cross-grantee analysis difficult. Yet if these variations are known, analysis and trends may be possible to make to explain the data. PO's should, therefore, try to document in the end-of-year report these variations.

For Measure 1: For purposes of this guidance, any ensuing violation of a grantee's laws or regulations shall be considered a repeat or subsequent violation, not simply the same or similar violations. Questions to be asked include:

- Does the program have a set policy or practice of conducting follow-up inspections of previous violators?
- How often and under what circumstances?
- How does the grantee define "the same entity receiving a previous violation?"
- How does the grantee calculate the date of the initial enforcement action and the date of any subsequent enforcement action?
- Is there a notable compliance assistance program that could affect whether there are repeat violations?
- Is the grantee aware of types of violations or violators that do not fit the average pattern reflected in what is reported as a summary number?
- What is the escalation policy (i.e., enforcement response policy) followed by the grantee to address repeat violators? If a grantee forwarded cases to EPA for action, the region should make every effort to report back to the grantee the results of these cases to assist grantees in tracking subsequent violations.

For Measure 2:

- What approaches to verification is the grantee using, especially for large categories of inspection types or violations?
- Is follow-up being relied upon vs. some other form of documentation?
- Are there categories of violations where the grantee is not finding a way to verify that a complying action is being taken?
- What are those categories and what proportion of the reported enforcement actions are they?

For Measure 3:

- Did the grantee provide the requested funding information about their enforcement program?
- How did the grantee determine the amount of funding for enforcement; is that budget split up front from other activities; was it based upon estimates and by whom?
- Did the method chosen tend to be over inclusive or over inclusive of costs associated with enforcement?
- Were overhead expenses included, not included, etc? The focus should be on areas where significant costs may be excluded or over included.

Project Officer Analysis

During the first years of collecting grantee data to populate these measures, it is particularly critical that project officers make every effort to communicate with grantees in order to understand the specifics of the grantee's enforcement program. Only in this way will EPA be able to have a good sense of what is behind the reported data. Where a project officer (or a team of project officers) is aware of unusual results from one grantee or a number of grantees, the project officer should provide an analysis of how or why the reported outcomes do not follow expected results. The PO may be aware of unique factors - even those beyond what may be captured in the questions above (geography, unique categories of applicators or pesticide uses, special targets, etc.) - that may help explain the results and the differences or similarities. At a national level, this information may provide additional insight in making national comparisons.



Pesticide Enforcement Outcome Measure Reporting Form

Grantee _____

Fiscal Year _____

Measure No. 1 - Repeat Violator

A. Total # of Regulated Entities Receiving Enforcement Actions	B. Total # of Entities Receiving Subsequent Enforcement Actions (i.e. subset of column A)	C. Repeat Violator Measure—B/A

Measure No. 2 - Complying Actions

D. Total # of Enforcement Actions Resulting in Verified Compliance: _____

E. Total # of Enforcement Actions (from form 5700-33H): _____

F. Complying Actions Measure—D/F: _____

Measure No. 3 - Efficiency

G. Grantee Pesticide Enforcement Funding: \$ _____

H. EPA Pesticide Enforcement Funding: \$ _____

Base Enforcement _____

Worker Protection _____

Enforcement Discretionary _____

Lab Equipment _____

I. Efficiency Measure—(G+H)/E: _____

Guidelines for Using Container/ Containment EPA Form 5700-33H

Producer Establishment Inspection with Containment - A producer establishment inspection (PEI) with containment is an inspection of an establishment where agricultural pesticides are held in stationary bulk containers prior to being repackaged (produced) and held for distribution or sale; for the purpose of inspecting the facility's products, obtaining samples, and ensuring that secondary containment of the stationary containers is compliant. When conducting a PEI, product labels, containers, containment and records should be examined for compliance. Inspection of the books and records required by section 8 also are part of these inspections. In order for a PEI inspection to count as a containment PEI, the inspector must inspect the containment areas. These inspections are a subset of PEIs on the general 5700-33H form and should be included in that total.

Non-PEI Containment Only Inspection – A non-PEI containment only inspection is conducted at a facility engaged in custom blending of pesticides or commercial application of pesticides that have stationary pesticide containers that are subject to the regulations or a pesticide dispensing area. Containment and dispensing areas should be examined to determine if they are in compliance. These inspections are not included under another category on the general 5700-33H.

Violation Definitions

1. **Deficient labeling (i.e. cleaning and disposal instructions)** – Violations of any of the labeling requirements for refilling statements, cleaning instructions, recycling statements, reuse statements or batch codes.
2. **Deficient container design (valves, openings)** – Violations of the requirements for container design (DOT regulations); marking; container integrity; vent, gauge, or shutoff valve standards; or standard closures
3. **Producing Establishment registration violations** – Violations of the establishment registration, reporting or record keeping requirements.
4. **No contract manufacturing agreement, residue removal instructions, list of acceptable containers** – Failure to provide or possess a contract manufacturing agreement, residue removal and cleaning procedure, list of acceptable containers, or current labeling.
5. **Deficient management procedures & operation** – Failure to visually inspect containers prior to refilling, clean containers prior to refilling if necessary, or securely attach labels.
6. **Record keeping** – Failure to keep records of the residue removal procedure, list of acceptable containers, or contract manufacturing agreement at all or maintain them for 3 years; for each time a container is filled, the EPA registration number, the date of repackaging, or the serial number or identifying code of the container.
7. **Secondary containment & pads – capacity/design** – Violations of the requirements for design, construction materials, appurtenances, configurations of drains, and stormwater control.
8. **Secondary containment & pads – site management** – Violations of the requirements for operation, inspection, and maintenance.

9. **Secondary containment & pads – record keeping** – Failure to keep records of the person conducting inspection or maintenance and date, conditions noted and maintenance performed, how long non-stationary tanks remained at the facility, or construction date of the structure at all or maintain them for 3 years.

[Appendix 7b: EPA Container/Containment Form 5700-33H](http://www.epa.gov/compliance/resources/policies/state/grants/fifra/11-13guidanceappendix7b.pdf)

(<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/11-13guidanceappendix7b.pdf>)

Please note that the form is interactive and requires Adobe Acrobat 8 or higher.

**List of Pesticides Scheduled to Undergo Preliminary Risk Assessments or
Registration Reviews in FY2011/2012**

During FY2011

The Office of Pesticide Programs (OPP) will be conducting a preliminary risk assessment for fenarimol.

During FY2012

OPP likely will be conducting preliminary risk assessments for cyromazine, triflumizole, clofentazine, lactofen, hexythiazox, paclobutrazole and perhaps cyanamide.

In addition, OPP will be opening a large number of new cases in registration review. The schedule can be found at: http://www.epa.gov/oppsrrd1/registration_review/schedule.htm

The review activities have not yet been for FY2013 at this point. By the end of 2009, OPP will be posting the FY2013 schedule for docket openings. Some of the above may also be modified based upon the timing of the issuance of new data call-ins.

Appendix 9: Guidance for Providing Water Quality Monitoring Data to EPA's Office of Pesticide Programs

There are several options for providing the data or data locations to EPA/OPP:

1. If the data are already in the new STORET database, then simply let OPP know where the dataset is located within the database.
2. If the data are in legacy versions of STORET, or in other data systems, then OPP would like to get the type of metadata and detailed data described in the following sections.

(n.b., As a point of reference, *The National Water Quality Monitoring Council*, a consortium of federal, tribal, state and local agencies, academia, and the private and public sector water supply industries, developed guidance on water quality data elements that enhance the evaluation and sharing of water quality data. The data elements identified below were derived from this guidance (http://acwi.gov/methods/data_projects/index.html, accessed 10/2/2006). In addition, detailed guidance on elements included in data quality standards may be found in the *Environmental Sampling, Analysis and Results (ESAR) Data Standard* issued by the Environmental Data Standards Council: <http://www.envdatastandards.net/content/article/detail/649?PHPSESSID=f4d35d5d72960a91284c065c6ed71f9a>)

Sample data should include at a minimum:

- Bibliographic reference
Data included in an EPA risk assessment need to be citable. The reference would ideally be for a report on the study in which the data were collected. If the bibliographic citation is a website, it should reference the page containing the data in question (not the general site for the database), and must identify the date the page was accessed. A database that is on the web containing data from multiple studies is acceptable, as long as a lead contact (i.e. study director or collecting organization) for the study that collected the specific data in question is provided.
- Sample collection date (and time, if available)
- Sample ID
- Location description (Water body name in National Hydrography Dataset, and location descriptor such as: latitude/longitude, FIPS code, water body & segment)
- Sample media (e.g. water, filtered water, bed sediment, tissue, etc.)
- Concentration detected and measurement units
- Detection limit and analytical method

Other important information that aid in interpreting monitoring data are:

- What was the purpose of the study (i.e. study design rationale)? (a reconnaissance study, targeted to compounds of interest, TMDL plan, statistically designed)
- QA/QC for sample collection and analytical methods, including a discussion of any limitations of the data
- Time of sample (e.g. date, time; duration (if a composite), timing to stream hydrograph, if flow-weighted sample)

- Sample collection method (e.g. grab or composite)
- Toxicity testing, if conducted. (Include test methodology, test species, endpoint assessed, and any toxicity identification evaluation(s) which identified the specific toxicant(s) causing toxicity.)

Metadata (ancillary data) are needed when using the data quantitatively, such as

- Land use, including cropping pattern, agriculture/urban, etc.
- Pesticide usage that could affect water quality at sampling location
- Did the sampling methodology & analytical methods go through a formal QA process
- Is the formal QA process documented (e.g. in a report or on a website address)
- For pesticides that adsorb to sediments: percent organic carbon, bulk density, etc.
- Relevant organism parameters (size or life stage)
- For some chemicals, environmental conditions may affect mobility and persistence (for example: temperature, pH, hardness, turbidity). If this is known to occur, information on the parameter would be helpful in interpreting the data.

OPP recognizes that raw data for all the parameters listed above may not be available in all monitoring studies, particularly for older studies, and that the types of water quality data collected might be different between monitoring programs. There is no need for states to create or reformat any data – OPP will attempt to use what is available, either qualitatively or quantitatively. In that spirit:

If the supporting data were collected in a monitoring program conducted by the states themselves, OPP would like to receive the detailed monitoring data and a copy of any report describing the purpose and design of the monitoring study, or internet web address leading to this information.

If the data were collected by an outside party, such as university researchers, then citations of published reports or copies of the reports themselves would provide the needed context. (Note, please do not submit NAWQA data if it was used as the basis of a 303(d) listing or identification of a water body of concern, instead please reference the specific NAWQA dataset.)

If any 303(d) listings or other water quality concerns for pesticides were based on watershed characteristics or expected pesticide use, and not actual pesticide detections in surface water, such information could help inform OPP's risk assessment, as well.

In summary, OPP is interested in seeing all available data for a specific water body of concern to a State. If a monitoring study is already contained within the new STORET all that is required is its location within the database. For monitoring studies not contained with the new STORET, please submit data, or provide database locations, with associated documentation or references, as described above.

Appendix 10
Base List of Pesticides of Interest

State List of Pesticides of Water Quality Concern

Source: State Survey for Water Resource Monitoring Programs and Analytical Parameters
October 2005 - Conducted by the SFIREG WQ/PD Working Committee
Includes chemicals of concern for both ground and surface water

2,4-D Lam	bda-cyhalothrin
Acetochlor (+ ESA, OXA)	Lindane (Voluntarily cancelled, use of existing stocks permitted until October 1, 2009)
Alachlor (+ ESA)	Malathion
Aldicarb (+ degradates)	Mesotrione
Atrazine (+ DEA, DIA, DACT, Hydroxy)	Metalaxyl
Azinphos-methyl	Methyl
Bentazon Metsulfuron	Metolachlor (+ ESA, OXA, S-Metolachlor)
Bromacil	Metribuzin (+ DA, DADK, DK)
Carbaryl	MSMA + other arsenical herbicides
Carbofuran (Cancellation being prepared)	ide
Chlorothalonil Napropam	Norflurazone (+ degradates)
Chlorpyrifos (+ TCP)	ethalin
Clopyralid Pendim	Phenoxy herbicide group
Copper Pesticides	Phosmet
Dacthal (+ degradates) (Cancellation being Prepared) Picloram	Prometon
DBCP	Prometryn
Diazinon	
Dicamba Propazine	le
Dimethenamid Propiconazo	Simazine (+ DACT, DIA)
Diuron	Sulfometuron (et. al.)
Endosulfan	Tebuthiuron
Esfenvalerate	Terbacil
Ethoprop	Thiamethoxam
Glyphosate (+ AMPA)	Tralkoxydim
Hexazinone (+ Metabolite B)	
Imazamethabenz Triallate	
Imazapyr Triclopyr	
Imidacloprid	Trifluralin
Isoxaflutole	

[Appendix 11: Endangered Species End-of-Year Report Form](#)

(<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/11-13guidanceappendix11.pdf>)

Please note that the form is interactive and requires Adobe Acrobat 8 or higher.

[Appendix 12: Endangered Species Inspection Report Form](http://www.epa.gov/compliance/resources/policies/state/grants/fifra/11-13guidanceappendix12.pdf)

(<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/11-13guidanceappendix12.pdf>)

Please note that the form is interactive and requires Adobe Acrobat 8 or higher.

Embedded Adobe XML Form

The file <http://www.epa.gov/compliance/resources/policies/state/grants/fifra/11-13guidanceappendix12.pdf> is an Adobe XML Form document that has been embedded in this document. Double click the pushpin to view.

